109-421

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 103.

MOSES FEIBELMAN, ADMINISTRATOR OF NATHAN FEIBELMAN, DECEASED, PLAINTIFF IN ERROR,

vs.

S. B. PACKARD, UNITED STATES MARSHAL, MICHAEL GERNON, AND W. R. FISH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED OCTOBER 11, 1880.

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a Circuit court of the United States, fifth circuit and district of Louisiana.

NATHAN FEIBELMAN, PLAINTIFF IN ERROR,
versus
S. B. PACKARD ET ALS., DEFENDANTS IN ERROR. } No. 7398.

John Ray, esq., for plaintiff in error; J. R. Beckwith, esq., and Cotton and Levy, esq's, for defendant in error.

Transcript of record returnable to the Supreme Court of the United States the second Monday of October, 1880.

1 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

NATHAN FEIBLEMAN
versus
S. B. PACKARD ET AL. } No. 7398.

Petition for certiorari & 3 exhibits.—Filed April 22d, 1875.

To the honorable the judges of the circuit court of the United States for the district of Louisiana:

The petition of Stephen B. Packard, W. R. Fish, and Michael Gernon respectfully show unto your honors that they are defendants in a certain cause pending in the fourth district court for the parish of Orleans, referred to and described in the copy of the petition, bond, and other documents hereto annexed and made a part of this petition, to which petitioners refer, and aver that the matter therein set forth are true in manner and form as therein set forth and averred, with the exception that the
2 said process in said petition averred to have been issued to your petitioner, S. B. Packard, U. S. marshal, was issued from the district court of the United States for the district of Louisiana, sitting in bankruptcy in the administration of the general bankruptcy laws of the United States, instead of from the U. S. circuit court, as herein averred, which error in said petition in no manner affects the rights of your petitioners.

And your petitioners aver that they have been and are advised and informed that said action is an action arising under the Constitution and laws of the United States, and that according to the tenor and effect, true intent and meaning of the said act of Congress, referred to in said petition, they had and have the lawful right to have said cause removed for trial and further proceedings to this court; that in order that they might have and enjoy said right, the said cause not having as yet been heard and determined in said State court, did, on or about the 7th day of April, A. D. 1875,
3 in due form of law make and file in said State court a petition addressed to said court, of which said petition a certified copy is hereto annexed and made a part hereof, marked "Exhibit 1."

That at or about the same date they also did execute and deliver and file in said court and present the said judge thereof, whereof the Hon. B. Lynch is judge, their bond with good and sufficient surety in the sum

therein named, conditioned as the law directs, as more fully and at large will appear by the examination of a certified copy thereof hereto annexed and made a part of this petition, marked "Exhibit 2;" wherefore, the said State court in no manner disapproving or rejecting said bond by reason of the form, conditions, or sufficiency, your petitioners became and was entitled to have said cause removed to this court for further proceedings and trial, and did so ask and demand of said State court, and the judge thereof, that said cause be considered and deemed a cause in
4 due form of law removed from the jurisdiction and control of said State court and pending in this court.

Yet, unmindful of the right of your petitioners in this behalf and respect, the said judge of said State court did afterwards, on the 14th day of April, 1875, refused to so act and consider said cause, but on the contrary thereof did make, or claim to make in his said court, an order in said court refusing your petitioners the right by them so demanded, all of which will at large appear by an inspection of a copy of said alleged order hereto also annexed and made a part hereof, marked "Exhibit 3," and still claims and pretends to have full jurisdiction and control over said cause, and doth threaten to proceed therewith, the rights of your petitioners and said proceedings for removal of said cause to this court to the contrary notwithstanding.

Wherefore, the premises considered, your petitioners pray that
5 your honors will allow and grant in their behalf a writ of certiorari in due form of law, under the seal of the court, directed to the said Hon. Bartholemew L. Lynch, judge of the said fourth district court for the parish of Orleans, admonishing him that this court has acquired and now holds full jurisdiction over said cause, and commanding him that he do forthwith certify to this the said circuit court of the United States for the district of Louisiana a full and complete record of all proceedings had and of record in said court, and that said cause may be proceeded with in this court as by the statute of the United States provided and required.

That the court appoint some discreet person to serve said writ, the marshal of this court being a party in interest in said cause, and for such other and further relief as to the court shall seem meet and just.

(Signed) J. R. BECKWITH,
Att'y for Petitioner.

I, J. R. Beckwith, an attorney and counsellor at law in the State of Louisiana, do certify that I have carefully examined the matter
6 contained in the foregoing petition, and that I believe the matters therein set forth to be true in manner and form as therein set forth.

(Signed) J. R. BECKWITH, *Att'y, &c.*

DISTRICT OF LOUISIANA:

S. B. Packard, being duly sworn, deposeth and saith that he knows the contents of the foregoing petition; that he believes the same to be true.

(Signed) S. B. PACKARD.

Sworn and subscribed before me this 22d day of April, A. D. 1875.

[SEAL.] (Signed) F. A. WOOLFLEY,
Clerk U. S. Circuit Court District of Louisiana.

Exhibit No. 1.—Attached to foregoing petition.

STATE OF LOUISIANA:

4th district court.

NATHAN FEIBLEMAN
vs.
S. B. PACKARD & ALS. } No. 41800.

To the honorable the judge of said court:

7 The petition of S. B. Packard, W. R. Fish, and Michael Gernon, defendants in the above-entitled suit, respectfully show unto this honorable court that the said petitioner and defendant, S. B. Packard, at and before the time of the institution of this suit, to wit, April 24, 1873, was and is the duly appointed and qualified United States marshal in and for the district of Louisiana, and as such officer charged by law to obey and execute the writs and orders of or issued by both the circuit court of the United States for the 5th judicial circuit and district of Louisiana and the district court of the United States in and for said district of Louisiana; that the duty and authority to obey and execute such orders and writs directed to him is imposed and conferred on and vested in him by the law of the United States, and not by the law of any State thereof; that the direction and manner in which he shall discharge the duties of his said office and execute such writs is also established and ordained solely by
8 the acts of the Congress of the United States, and not by any State law, and that in any and all suits, prosecutions, or claims made or instituted against such marshal on account of any neglect, error, or supposed wrong committed by such marshal involves and is a suit arising under the Constitution and laws of the United States within the intent and meaning of an act of Congress entitled "An act to determine the jurisdiction of circuit courts of the United States, and to regulate the removal of causes from State courts, and for other purposes," approved March 3, 1875.

That the balance of your said petitioners and defendants in this cause are sureties on the official bond of the said S. B. Packard, marshal as above stated, and are only sued in the court as such sureties on said bond made to the United States in accordance with the requirements of its laws.

That this suit is instituted by the said plaintiff herein to recover
9 from said U. S. marshal and from your other petitioners, sureties on his bond as aforesaid, a sum exceeding the sum of five hundred dollars, exclusive of cost, for alleged wrongs and injuries alleged to have been committed by the said Packard, U. S. marshal, in the execution of an order or writ issued by the circuit court of the United States in and for the district of Louisiana directed to him; that the manner in which he shall execute said process are regulated and defined alone by the law of the United States, and not by the law of this or any other State, and the proper courts of the United States have full and competent jurisdiction to hear and determine all matters involved in this case, and it is particularly meet and proper that the Federal court should hear and determine this cause.

That your petitioners herewith file a good and sufficient bond with good and sufficient sureties, in the sum of dollars, conditioned
10 as the law directs, as will to the court appear by reference to said bond on file. Whereupon your petitioners, inasmuch as this cause

is now still pending and has not been tried and determined, and your petitioners desire that said cause shall be transferred and removed to the circuit court of the United States for the 5th circuit and district of Louisiana, at the next term thereof, to be held at New Orleans on the 4th Monday in April, 1875, for further proceedings and trial.

Your petitioners pray that said bond be accepted, and that this court proceed no further in said suit in this court, but consider and deem the same removed for all further proceedings and trial to the said circuit court of the United States.

And will ever pray, &c.

(Signed) J. B. COTTON AND J. R. BECKWITH, *Att'ys.*

11 EXHIBIT 2.—*Bond referred to in petition.*

Know all men by these presents that we, S. B. Packard and M. Gernon, of the city of New Orleans, State of Louisiana, as principals, and F. A. Woolfley, of the place aforesaid, as surety, are jointly and severally indebted unto Nathan Fiebleman, heirs, executors, administrators, or assigns, in the full sum of two hundred and fifty dollars; for the payment of which well and truly to be made we do hereby jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents. Signed by our hands and sealed with our seals this 7th day of April, A. D. 1875.

The condition of the above obligation is such that whereas the above bounden S. B. Packard, W. R. Fish, and Michael Gernon, defendants in a certain suit or action depending in this the fourth district court for the parish of Orleans, in which said suit the said above-named N.
12 Feibleman is plaintiff, said suit being No. 41800 of the docket of said fourth district court; and whereas said suit is of a civil nature and arises under the Constitution and laws of the United States, and is removable by law into the circuit court of the United States for the fifth circuit and district of Louisiana; and whereas the said above-named S. B. Packard, W. R. Fish, and Michael Gernon, said defendants, have this day made and filed in said fourth district court their petition in due form of law, as required by the act of Congress in such case made and provided, and are desirous to remove said cause as aforesaid:

Now, therefore, if the above-named S. B. Packard, W. R. Fish, and Michael Gernon shall enter or cause to be entered in said circuit court of the United States at the first day of its next session thereof, to be held at New Orleans on the 4th Monday in April, 1875, a copy of the record in said cause, and shall pay to the party or parties entitled thereto all
13 costs that may be awarded against them by the said circuit court of the United States, if said court shall hold that said suit was wrongfully or improperly removed thereto; and also shall appear in said court and do and perform all such other acts as are or may be necessary to comply with the law of the United States relating to the removal of suits of this character, then and in that case this obligation shall be null and void; but otherwise in full force and effect.

(Signed) S. B. PACKARD.
(Signed) F. A. WOOLFLEY.
(Signed) W. R. FISH.
(Signed) MICHAEL GERNON.

The amount of the bond is filled up by order of Court, nunc pro tunc, April 7, 1875.

STATE OF LOUISIANA:

Fourth district court for the parish of Orleans.

I hereby certify the foregoing petition and bond to be true copies of the originals on file, and of record in the office of the clerk of this court.
New Orleans, clerk's office, April 21, 1875.
(Signed) J. S. CHALON, *D'y Cl'k.*

14 EXHIBIT 3.—*Annexed to Petition.*

STATE OF LOUISIANA:

Fourth district court for the parish of Orleans.

WEDNESDAY *the 14th day of April,* 1875.
Present, Hon. B. L. Lynch, Judge.

NATHAN FEIBLEMAN *vs.* S. B. PACKARD ET AL. } No. 41800.

The rule taken by defendants herein to transfer this case to the United States circuit court for the district of Louisiana came on this day for trial—Cotton & Levy for pl'ffs in rule; John Ray for def't in rule—when after hearing pleadings, evidence and counsel, it is ordered by the court that the said rules be discharged.—(Extract from the minutes.)
F. F. PALMS, *D'y Cl'k.*

TRANSCRIPT FROM STATE COURT.—FILED APRIL 22D, 1875.

STATE OF LOUISIANA:

Fourth district court for the parish of Orleans.

15 *Petition.—Filed April* 24, 1873.

Fourth district court for the parish of Orleans.

NATHAN FEIBLEMAN. *vs.* S. B. PACKARD & ALS. } No. 41800.

The petition of Nathan Feibleman, resident of the parish of Madison, in the State of Louisiana, respectfully represents unto your hon. court that about the month of June last (1872) he rented from Moses Feibleman the one-half, or rather the one side of a large store house, being about one hundred and thirty feet long and thirty feet wide, in the town of Delta, in said parish of Madison, and the same was filled up with shelves, counters, office, etc., suitable for a dry goods and variety, or general as-

sortment store. That in the month of September, A. D. 1872 (last), he opened a stock of merchandise of a general assortment excepting groceries, suitable for the trade of that vicinity in said store-house, and was doing a lucrative and thriving business in his said capacity as merchant
16 in said store until about the 3d day of March last, A. D. 1873, when S. B. Packard, United States marshal for the district of Louisiana, by his deputy, C. R. Steel, seized and took forcible possession of his entire stock of merchandise, of which seizure petitioner made protest amounting to the value of about fifteen thousand dollars, and also the said store-house, and closed up the same and has held the same ever since, and is yet in possession thereof, whereby your petitioner's business of merchant has been entirely suspended and broken up, at that season of the year when the best business is usually done by country merchants.

Petitioner avers that said Packard, marshal, and his said deputy, Steel, pretends to have made said seizure and taken possession of said store-house, and closed it up, under and by virtue of a warrant or writ issued by the judge of the district court of the United States for the district of Louisiana, in the suit entitled D. Valentine and Co. et al. vs. E.
17 Dreyfus and Co., No. 1265 being a petition or suit to force the said E. Dreyfus & Co. into voluntary bankruptcy, said warrant or writ directing the marshal to seize and detain the effects of E. Dreyfus & Co., all of which will more fully appear by reference to a duly certified copy of said writ which is hereto appended and made a part of this petition.

Petitioner represents that all the goods, wares, and merchandize seized by the marshal as aforesaid are his individual property and in or to which no other person has any right or title; that no part of said effects were acquired by him from E. Dreyfus & Co., or any member of that firm, and that he never by himself or any agent had a business transaction with said E. Dreyfus & Co. or any member of that firm; that he is not in any manner connected directly or indirectly with or interested in the suit of D. Valentine & Co. vs. E. Dreyfus & Co., and that the act of seizing his goods, wares, and merchandise and closing up his store by the marshal and his deputy without any shadow of legal author-
18 ity or right of any kind and is illegal, tortious, vexatious, and ruinous to petitioner in the suspension and breaking up of his business, and that the acts of said marshal and his deputy have caused petitioner special damages for the causes and in the amounts set forth in the following items, and has laid said Packard liable to your petitioner for vindictive and general damages as is hereinafter set forth.

ITEM FIRST.—That the seizure of petitioner's goods, wares, and merchandize, and the closing up of his store-house, have resulted in the entire breaking up and suspension of petitioner's business as merchant, whereby he has been deprived of the profits derived from the sale of merchandize during the time of such suspension, which is at present continuing, and how long it may continue petitioner cannot say. That his said business is so broken up that even after he should get possession of his stock of merchandize and store it would, under the most favorable circumstances, take him six months to get his business restored to the condition it
19 was in when said seizure was made; that petitioner was doing a good, thriving, remunerative, and increasing business when his

business was broken up as above described, by which acts of said Packard, marshal, and his deputies, your petitioner for the causes stated in this item has suffered damages in the sum of ten thousand dollars.

ITEM SECOND.—That the said seizure of petitioner's goods, wares, and merchandize and the closing up of his store-house, as is hereinbefore described, has made it impossible for petitioner to realize funds to pay the debts contracted by him in the purchase of stock of merchandize and has entirely destroyed his credit in the wholesale market where he purchased his stock and elsewhere, and has in fact made him liable to be forced into bankruptcy, by which your petitioner has suffered damage in the sum of at least ten thousand dollars ($10,000).

ITEM THIRD.—That the goods, wares, and merchandize seized
20 by said marshal and his deputies are of a character that if kept in open house on the shelves, as is done in this case, without daily attention are liable to damage and will so damage as to become entirely unsaleable except as damaged goods, and that the stock of merchandize so seized has already damaged to the full amount of fifty per cent. below their value at the time of the seizure, and if so kept any further considerable length of time will become worthless as merchandize in a store for sale. The damage already amounts to at least seven thousand five hundred dollars, and petitioner herein reserves the right to share the damage that may result to said stock of merchandize up to the time it may be delivered back to petitioner, whatever that may be, and if said merchandize is lost or destroyed, or petitioner ultimately loses them on account of said seizure, then he claims the full value thereof, fifteen thousand dollars, as damages.

ITEM FOURTH.—That petitioner is informed and believes that through the neglect and unfaithfulness of the agents of said marshal con-
21 siderable amounts of the merchandize in the store of petitioner at the time of said seizure have been stolen or destroyed, to the value of one thousand dollars, the particular items so stolen or destroyed, petitioner cannot now designate and will not be able to designate until he gets possession of his store-house and goods, etc., but which he reserves herein the right to file as soon as he can ascertain the same.

ITEM FIFTH.—Petitioner has been compelled to employ counsel to appear in said suit of D. Valentine & Co. vs. E. Dreyfus & Co. to have said seizure set aside, and to be permitted to bond the said merchandize in order that he could have the same restored to him, which has cost him one thousand dollars, and which he claims as damages herein.

ITEM SIXTH.—Petitioner has been compelled to employ attorneys to prosecute this claim for damages against the said marshal at the cost of two thousand five hundred dollars, which he claims as damages herein.

ITEM SEVENTH.—That petitioner has been compelled to employ
22 attorneys to prosecute this claim for damages against the said marshal at the cost of two thousand five hundred dollars, which he claims as damages herein.

ITEM SEVENTH.—That petitioner has been compelled to pay heavy expenses in travelling, paying hotel bills and other necessary expenses, and has lost and will lose much valuable time in attending to obtaining the release of his said merchandize from seizure and attending to this suit, which will amount to at least one thousand dollars, which he claims as special damages in this case.

ITEM EIGHTH.—That petitioner is compelled monthly to pay seventy-five dollars rent for said store-house, and fifty dollars per month to his clerk during the time said goods are under seizure, which he claims as damages in this case.

Petitioner further avers that he is entitled to vindictive damages in this case for the reason that his said stock of merchandize and store-house has been seized by the marshal without a shadow of right, petitioner
23 being in no manner connected, directly or indirectly, with E. Dreyfus & Co., and the marshal nor his deputies having no evidence or right to believe that any of the merchandize in petitioner's possession belonged to E. Dreyfus & Co. or any member of that firm, but that the marshal and his deputies, disregarding petitioner's rights and interests, and obeying the request of the plaintiffs or their attorneys in the suit of D. Valentine & Co. & al., vs. E. Dreyfus and Co., did seize plaintiff's stock of merchandize and store-house, and utterly ruined petitioner's business and credit, which was done maliciously, illegally, and wrongfully, and for which plaintiff claims the sum of ten thousand dollars, as general damages to his good fame and reputation as a business man, and to which he is entitled as vindictive damages.

Petitioners aver' that S. B. Packard, United States marshal for the district of Louisiana, individually and in his said character as marshal as aforesaid, and Michael Gernon and W. R. Fish, all residents of the
24 State of Louisiana, his securities on his official bond as such marshal, a copy of which is hereto annexed for evidence and greater certainty, are responsible in solido unto your petitioner in the several items of general and special damages hereinbefore set forth.

Wherefore petitioner prays your honorable court to cause the said S. B. Packard and Michael Gernon and W. R. Fish to be cited to appear in your honorable court and answer hereto, and that on a final hearing hereof that petitioner have and receive judgment against said defendants in solido for the several accounts of general and special damages herein claimed and for costs of this suit, and for general and equitable relief, etc.

(Signed) JOHN RAY,
Do. R. G. COBB,
Do. WM. GRANT,
Att'ys.

Citation to S. B. Packard, W. R. Fish, and Michael Gernon.

NATHAN FEIBLEMAN
vs. } No. 41800.
S. B. PACKARD ET ALS.

25 To Michael Gernon, W. R. Fish, & S. B. Packard, residing in the city of New Orleans:

You are hereby commanded to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fourth district court for the parish of Orleans, in · days after the service hereof.

Witness the honorable B. L. Lynch, judge of the said court, the 25th day of April, A. D. 1873.

(Signed) A. T. LYND,
Deputy Clerk.

Sheriff's return.

Received April 28th, 1873, and on the same day, month, and year served copy of the within citation and accompanying petition on S. B. Packard & W. R. Fish, defendants herein, in person, and on Michael Gernon, defendant herein, by leaving the same at his domicil, No. 41, Robertson street, first district, in the hands of his wife, a person apparently above
26 14 years of age, living and residing in the same domicil, the said Gernon being absent from home at the time of said service, all of which facts connected with this service I learned by interrogating the said Mrs. Gernon.

(Signed) PH. LACOSTE,
D'y Sheriff.

Exception.

N. FEIBLEMAN
vs.
S. B. PACKARD ET ALS. } No. 41800.

Now comes S. B. Packard, U. S. marshal, and W. R. Fish and Michael Gernon, made defendants in above-entitled and numbered cause, and reserving all rights to further except and to answer to the petition of plaintiff, for exception to said petition show with respect:

That said petition is so vague, indefinite, and general, and is so insufficient in its allegations, that these appearers cannot safely answer 'hereto, and said petition discloses no cause of action for this:

That it appears upon the face of said petition that this is a suit
27 upon a bond in favor of the United States of America and not in favor of petitioner; that it is matter of law that petitioner can claim nothing of these parties under said bond, except in accordance with the note prescribed by the statutes of the United States; that the laws of the United States, as well as the ordinary rules of pleading, require a specific and particular assignment of the breaches of the conditions of the bond sued on before any action will lie thereon; that the conditions of said bond are not set forth in the petition herein, and that no assignment of breaches thereof is alleged.

Therefore these appearers pray to be hence dismissed with costs.

(Signed) RICE & WHITAKER, *Att'ys.*

Filed May 12, 1873.

(Signed) A. T. LYND, *D'y Clerk.*

Amendatory petition.

N. FEIBLEMAN
vs.
S. B. PACKARD ET ALS. } No. 41800.

28 To the honorable B. L. Lynch, judge of the 4th district court for the parish of Orleans:

The petition of Nathan Feibleman, by way of amendment to the original petition filed in said cause, with respect alleges:

That the said Stephen B. Packard, on or about the day of

187 , made and executed his certain official bond in the sum of $20,000, with Michael Gernon and William R. Fish as sureties, conditioned for the faithful performance of his duties as marshal of the United States of America in and for the district of Louisiana, as will more fully appear by reference to the copy thereof filed with and made a part of the original petition.

That all the acts charged and complained of in said original petition, by which the petitioners suffered the damages therein set forth, were done by said Packard in his capacity of marshal aforesaid, and are breaches of the conditions of said bond, and give unto your petitioner this right of action on said bond against said marshal and his sureties.

29 Wherefore plaintiff's pray that defendants may be cited to answer this petition and that they may have judgment against the said Stephen B. Packard, Michael Gernon, and William R. Fish as prayed in said original petition, and costs of suit.

(Signed) JOHN RAY.
" WM. GRANT.
" R. G. COBB.
Att'ys.

Filed June27th, 1873.
(Signed) A. T. LYND, *dy. cl'k.*
Service accepted June 27, 1873.
(Signed) RICE AND WHITAKER, *Att'ys.*

Judgment by default—Extract from minute-book of November 6th, 1873.

NATHAN FEIBLEMAN
vs. } No. 41800
S. B. PACKARD, ET ALS.

On motion of John Ray, R. G. Cobb, and Wm. Grant esqrs., of
30 counsel for plaintiff, and upon suggesting to the court that defendants have failed to answer altho' they have accepted service and waived citation:

It is ordered by the court that judgment by default be herein entered against them.

(Same case.)

On motion of John Ray, R. G. Cobb, and Wm. Grant, esqrs. of counsel for plaintiff, and on suggesting to the court that the deposition of witnesses under commission issued herein have been returned and filed in this court:

It is ordered by the court that defendants do show cause on Monday, the 17th instant, at 11 o'clock a. m., why the testimony returned and filed herein should not be read in the trial of this cause.

Certificate.

STATE OF LOUISIANA:

Fourth district court for the parish of Orleans.

I, Edward De Blois, clerk of the fourth district court for the parish of

Orleans, do hereby certify that above foregoing eighteen pages do
31 contain a full, true, correct, and complete copy of the petition, citation, exception, amendatory petition, and judgment by default filed and entered in the cause wherein Nathan Feibleman is plaintiff and S. B. Packard et als are defendants, instituted in said fourth district under the number 41800 of the docket hereof.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court at the city of New Orleans on this 17th day December, in the year of our Lord eighteen hundred and seventy-three, and in the ninety-eighth year of the independence of the United States.

[SEAL.] (Signed) ED. DE BLOIS, *Clerk.*

32 *Order to issue writ—Extract from minutes November term* 1874.

NEW ORLEANS, *Saturday April* 24, 1875.

Court met pursuant to adjournment.

Present, Hon. W. B. Woods, circuit judge.

EX PARTE
STEPHEN B. PACKARD. } No. 7398.

The application for a writ of certiorari in this case was called up.

J. R. Beckwith for applicant; Jno. Ray & Wm. Grant for defendants.

And after hearing argument, it is ordered that a writ of certiorari issue in above case as prayed for in the petition.

Writ of certiorari—Issued April 26th, 1875.

UNITED STATES OF AMERICA, *ss:*

Circuit court of the United States for the fifth circuit and district of Louisiana.

The President of the United States of America to the honorable B. L. Lynch judge of the fourth district court for the parish of Orleans, in the State of Louisiana, greeting:

33 Because it has been represented to us in our said court that a cause has been lately instituted and pending in your said fourth district court for the parish of Orleans, whereof you are the judge, in which said suit Nathan Feibleman is plaintiff and S. B. Packard and others are defendants, said cause being represented to us as being No. 41800 of the docket of your said court; and whereas it has been represented to us in our said court that the said cause has not as yet been tried and determined; and further that heretofore, as lawfully might, the said defendant therein, and in due form of law, made the due and proper application, and in due and proper form did, in full compliance with the provisions of the act of Congress in such case made and provided, ask and demand that the said cause be removed to our said circuit court for trial and further proceedings therein; and whereas it has further, in due form of law, been made to appear to our said circuit court that the said cause is lawfully removable to our
34 said court, and that you, the said judge of said fourth district court for the parish of Orleans, have neglected and refused to treat and

consider the said cause as a cause removed to our said court, and we being willing that right and justice shall be done in the premises, and that the said defendants in said cause shall have the right, benefit, and privileges conferred on and granted to them in and by the act of Congress in such case made and provided, and having ordered the said cause to be entered on the docket of our said court:

Now, therefore, we command you that you do forthwith certify to us in our said court a full record of all proceedings had and of record in your said court, in, about, or concerning the said cause now remaining in your said court, that said cause may be proceeded in in our said court, as by the statutes of the said United States provided and required.

Witness, the honorable Morrison R. Waite, Chief Justice of the
35 Supreme Court of the United States, this 26th day of April, A. D. 1875.

[SEAL.] (Signed) F. B. VINOT, *D'y Cl'k.*

Let John Fahy be appointed to serve this writ. April 26th, 1875.
(Signed) W. B. WOODS, *Judge.*

Return.

Received April 26, 1875, by the U. S. marshal, and on the same day, month, and year served a copy hereof on B. L. Lynch, judge of the fourth district court, parish of Orleans, by handing it to him in person, at his domicil, 119 Elysian Fields street, in this city.

New Orleans, April 26, 1875.
(Signed) JOHN FAHY.

Answer.—Filed January 10th 1876.

Circuit court of the United States, district of Louisiana.

NATHANIEL FEIBELMAN
vs.
S. B. PACKARD. } No. 7398. Answer.

36 And now come the said defendants, and for answer to said plaintiff's petition, saving and reserving the benefit of all exception heretofore made and filed in this cause, deny all and singular the allegations in said plaintiff's petition contained, alleged, and set forth, except in so far and to such extent as the same may be hereinafter specially admitted.

And, further answering, said defendants say that it is true that at the day and date in said petition named the said defendant, Stephen B. Packard, was United States marshal in and for the district of Louisiana, as in said petition averred.

And said defendants further admit and aver that it is true that on or about the 21st day of January, A. D. 1873, the commercial firm of David Valentine & Co., of the city of New York, composed of David Valentine, Frederick A. Macy, and William H. King, in due form of law, presented and filed in the district court of the United States, in and for the district of Louisiana, their petition in due form of law against the said E.

37 Dreyfus and Company named in said plaintiff's petition herein, addressed to the judge of said court, and, among other things, praying that the said Dreyfus & Co. be by said court, after due proceedings had, adjudged and decreed to be bankrupts, according to the provision of the law of the United States in relation to bankruptcy then and at that time in force, which said petition contained and set forth all the material facts and averments necessary to give the said court full jurisdiction of the said inquiry.

That in said proceedings aforesaid, among other things, they applied to said court, sitting in bankruptcy, for a writ of provisional seizure in due form of law, directed to said defendant, S. B. Packard, U. S. marshal as aforesaid, commanding him to take possession provisionally of all of the effects of the satd E. Dreyfus & Co., and the same safely keep until the order and determination of the court in the premises; and further that said defendant, the said marshal, take possession of all the merchandize by the said Dreyfus & Co. transferred to the said plaintiff herein at Delta,
38 in Louisiana, and the same also hold and keep, subject to the order and determination of the said court sitting in bankruptcy. That the said U. S. district court, having full and competent jurisdiction in the premises, did after due consideration thereof, *did* then and there allow, make, and grant the said relief, order, and writ so prayed for in said petition, and grant and did make and issue the following order in the said cause, to wit:

"It is ordered that the marshal take provisional possession of all the property of the said defendants, real and personal, belonging to the said firm of E. Dreyfus & Co., or the individual members thereof, and particularly the merchandize pretended to have been transferred to Moses Feibelman, at Delta, Louisiana, and all of the books of accounts, bank books and papers of or relating to the business of said firm of E. Dreyfus & Co., and hold the same subject to the further orders of this court."

And the said court did further grant and allow and issue
39 a writ in due form of law under the seal of the said U. S. district court addressed to the said defendant, Stephen B. Packard, in his said official character as marshal as aforesaid, in which said writ the said defendant, U. S. marshal, as aforesaid was directed and commanded as such officer of said court instructively as follows:

UNITED STATES OF AMERICA,
District of Louisiana:

District Court of the United States.

D. VALENTINE & Co., }
vs. } No. 1265.
E. DREYFUS & Co. }

The President of the United States, to the marshal of the United States for the district of Louisiana, greeting:

You are hereby commanded in the name of the United States and of our district court to take provisional possession of all the property, real or personal, belonging to the firm of E. Dreyfus & Co., and to Emanuel Dreyfus, Marcus Weil, widow of Sam'l Weil, the individual members of said

firm, and of all the books of account, bank books and papers relating
40 to the business of said firm in whose hands soever you may find the same within your district, and particularly the goods, wares, and merchandize pretended to have been transferred and sold by the defendants to Moses Feibelman, of Delta, and hold the same subject to the further orders of our court.

Witness the Hon. E. H. Durell, judge of said court, at New Orleans, this 21st Jan'y, 1873.

K. LOEW, *D'y Clk.*

Which said writ is the writ or order referred to in said plaintiff's petition, and which said writ together with all proceedings connected therewith are of record in the said district court of the United States for the district of Louisiana, in suit or proceeding No. 1265 of the docket thereof, entitled D. Valentine & Co. et al. vs. E. Dreyfus & Co., to which defendant refers.

And defendant' further say that said writ so issued as aforesaid was delivered to said defendant, S. B. Packard, marshal, to be executed by him according to the tenor, effect, and command thereof, therein contained.
41 That in obedience to the command of said process the said defendant by his deputies did obey and comply with the command of said writ according to the tenor thereof, and did take into his possession and custody the goods, property, and chattels described and referred to in said writ, and no other goods, property, or chattels whatsoever; in which said act said defendant had from the nature of said writ no choice or election whatsoever.

And defendant', further answering, say that the said property so being in the possession of said marshal as aforesaid, was then and there in contemplation of law in the custody of the said court which issued said writ; that said defendant made full and due return of his acts and doings in obedience to said writ to the said court, together with a full description of the said property so taken into his possession, and that he so held the same until by lawful order of said court, sitting in bankruptcy, to wit, on or about the 20th day of June, A. D. 1873, when said defendant, said
42 marshal, delivered all of said property so seized under said writ into the possession of one E. E. Norton, who, before that time, had been appointed by the said court with authority to take the same into his possession, all of which will more fully and at large appear by the return made on said writ, and on file in said cause of D. Valentine & Co. vs. E. Dreyfus & Co., aforesaid.

And, further answering, defendants say that the said property so being seized and brought into said U. S. district court as aforesaid, and so being in the custody, possession, and control of the said court as the property of the said E. Dreyfus & Co., bankrupts as aforesaid, the said district court then and there became and was in all things vested with the full and exclusive right to hear and determine all questions of property or right of possession of said court thereof, and of all contents or enquiries whether the said property was subject to said writ, or whether the same was subject to be taken possession of and disposed of, and the proceeds thereof applied to the satisfaction of the claims of the creditors of the said bankrupts.

43 That afterwards, and on or about the 25th day of March, 1875, the said plaintiff, by his counsel, did, as he legally might, voluntarily ap-

pear in said cause of D. Valentine & Co. vs. E. Dreyfus & Co. in said bankrupt proceedings, and then and there by written allegations in that behalf make and submit to the court a claim and demand for custody of the goods, chattels, and property so in the possession of the court as aforesaid, the said goods and property so then and there claimed and sued for being the same goods and chattels named and described in the said plaintiff's petition herein, and in said proceedings did set up and aver that the same were the property of him, the said Nathan Feibelman, that issue was in said cause duly made, tried, and submitted to the court for deliberation, and that the judgment and decision of the said court in the premises has not as yet been made and delivered, but is still pending and undetermined.

Wherefore said defendants say that the said plaintiff herein having
44 so submitted to the said district court of the United States the adjudication of his alleged right to the possession and ownership of the said property described and set forth in his said petition is estopped and barred from any attempt to try his alleged title to said goods and property in any indirect or collateral way or proceedings, or by this action against these defendants, or from claiming, averring, or demanding any alleged damage or injury for any alleged taking or detention of any property whatsoever under or by virtue of said writ until the said district court of the United States shall have determined and adjudged the said question and issue, whether the said plaintiff herein has or had any right, title, or interest in or to said property so seized under said writ as aforesaid.

Wherefore said defendants pray judgment against the said plaintiff with costs and for general relief.

(Signed) J. R. BECKWITH,
Att'y for Def'ts.

Do. COTTON & LEVY,
Of Counsel.

45 *Petition for revival of case.—Filed December 7th*, 1877.

United States circuit court, dist. of La.

NATHAN FEIBELMAN
vs. } No. 7398.
S. B. PACKARD.

Moses Feibelman, administrator of Nathan Feibelman, dec'd, plaintiff in the above-entitled case, herewith presents to this honorable court his letters of administration of said Nathan Feibelman's estate obtained from the parish court of the parish of Madison in said State of Louisiana, as will more fully appear by reference to a certified copy of said letters hereto annexed and made part of this petition.

This appearer represents that said Nathan Feibelman recently died pending the above entitled case and after the same had been put at issue by an answer filed therein, and that his estate is interested in said case, which survives to his estate according to law.

This appearer prays that said suit be revived in favor of said Nathan Feibelman's estate, and that appearer as administrator be authorized
46 to prosecute the same to final judgment and to do all things in relation thereto, that the plaintiff could have done if yet living, and for judgment as is prayed for in the original petition in this case.

This appearer prays that the defendants in this case, S. B. Packard, Michael Gernon, and W. R. Fish, be cited and notified hereof and to show cause, if any they may have, why said suit should not be revived as herein prayed for, and for general relief, &c.

(Signed) J. & C. B. RAY,
do. WM. GRANT,
Att'ys.

Letter of administration annexed to and filed with foregoing petition December 7th, 1877.

STATE OF LOUISIANA,
Parish of Madison:

Parish court.

SUCCESSION OF NATHAN FEIBELMAN. } No. 265.

Whereas by an order made by the judge of said court on the 29th day of September, A. D. 1877, Moses Feibelman was appointed administrator of said succession, and has given bond and taken the oath prescribed by law.

47

Now, therefore, be it known by these letters that the said Moses Feibelman is duly appointed, authorized, and empowered to do and perform all and singular the acts and duties incident upon said appointment.

Witness the honorable Elias S. Dennis, judge of said court, and the official seal thereof, this 1st day of October, A. D. 1877.

(Signed) EDWARD TUCKER,
Deputy Clerk.

Amendment to answer.—Filed January 3d, 1880.

Circuit court of the United States, district of Louisiana.

MOSES FEIBELMAN, ADMINISTRATOR OF NATHAN FEIBELMAN, *vs.* S. B. PACKARD ET AL. } No. 7398. Amendment to answer.

And now comes the said defendants by J. R. Beckwith and J. B. Cotton, their attorneys, and by leave of the court first had and obtained do amend their said answer heretofore made and filed herein by adding thereto the following:

48

And for a further answer in this behalf said defendants say: That in the execution of the said writ set forth in said original answer the said defendant, S. B. Packard, United States marshal, strictly obeyed the command therein on him laid, as therein directed, and did not seize and take into his possession any other or more property than directed and commanded by said writ. That the pretense that the property of the said Nathan Feibelman was seized and taken into possession of said U. S. marshal, S. B. Packard, is false and a part of a scheme of fraud and deceit on the part of the said Nathan Fiebelman and the said Moses Fiebelman, and in furtherance of a scheme of fraudulent conspiracy between the said Nathan Fiebelman, Moses Fiebelman, and the said members of the firm of E. Dreyfus & Co., bankrupts, to cheat and defraud the lawful creditors of the said E. Dreyfus & Co.

49 That in contemplation of the bankruptcy of the said E. Dreyfus & Co., and with the intention to cheat and defraud the lawful creditors of the said E. Dreyfus & Co., the said Moses Fiebelman, the said Nathan Feibelman, and the said members of the firm of E. Dreyfus & Co., before and at the date of the said writ and the execution thereof, entered into an unlawful combination and conspiracy and agreement among themselves, by which it was agreed that the said Moses Fiebelman and Nathan Fiebelman should take into their possession, and hold if possible beyond the reach of any process of the Federal court sitting in bankruptcy, a large portion of the assets and property of the said bankrupts and by which the title therein should remain in the bankrupts, E. Dreyfus & Co.; the said Moses Fiebelman and Nathan Fiebelman should pretend to be owners thereof, and conceal and keep the same away from the lawful creditors of the said bankrupt firm, and defeat any attempt of the said district court of the United States for the district of Louisiana sitting in
50 bankruptcy in any way to reach said goods and merchandize by any process. That in furtherance of said unlawful scheme and conspiracy, the said Moses Fiebelman did, prior to the date of the issuance of said writ and the execution thereof, unlawfully and in a clandestine manner get possession of a large amount of the property of the said bankrupts, and convey the same to the said store in Delta; and attempt to conceal the same away from the creditors of the said E. Dreyfus & Co., bankrupts, and from the reach of any writ which might issue against the property of the said bankrupts. That in order to increase the chances of success in said scheme, and as he, the said Moses Feibelman, believed more effectually secrete and hide away said goods or conceal the real ownership thereof, for the unlawful purpose aforesaid, the said Nathan Fiebelman was taken into the conspiracy as an active member thereof and a considerable portion of said goods and merchandize was pretended to be nominally put into the possession of the said Nathan Fiebelman
51 to keep and conceal for the purpose aforesaid. That for that purpose and as a part of some criminal scheme of fraud it was given out and pretended by the said conspirators that Nathan Fiebelman was in possession of one half of said store in Delta, and held the same adverse and distinct from the said Moses Fiebelman, all of which these defendants say was a sham and a fraud. That the said Moses and Nathan Fiebelman were then and there the joint actors in one single unlawful purpose and object to cheat and swindle the creditors of the said E. Dreyfus & Co., out of the full value of the goods of the said bankrupts so fraudulently in their possession as aforesaid.

That, in the execution of the said writ set forth in said original answer, the said defendant, S. B. Packard, U. S. marshal, took no unlawful possession of any goods, merchandize, or property belonging to said Nathan Fiebelman, but in due and lawful manner obeyed said writ and took into his possession the property of the bankrupts named in said writ,
52 which was described in said writ, and only obeyed the command contained in said writ as in law he was bound to do. And said defendants further say that they deny that said goods, wares, and merchandize were, or at any time had been, the property of the said Nathan Fiebelman, and aver that the pretense that said property ever belonged to the said Nathan Feibelman and the institution of this action were both made

and done in furtherance of said unlawful conspiracy between the said Moses and Nathan Feibelman, in the hope that they might make their fraud successful and realize profit therefrom.

And said defendants pray that they may be permitted to file this their additional answer in the premises as an amendment to their original answer, and that there be judgment against the said plaintiff with costs, and will ever pray, &c.

(Signed) J. R. BECKWITH,
Do. J. B. COTTON,
Att'ys for Def'ts.

53 Let this amended answer be filed. Jan'y 3d, 1880.
(Signed) EDWARD C. BILLINGS, *Judge.*

Motion to strike out allegations in answer and amendment to answer.—Entered and filed January 26th, 1880.

U. S. circuit court.

NATHAN FEIBELMAN } *vs.* } No. 7398.
S. B. PACKARD ET AL. }

Plaintiff, by his counsel, John Ray and William Grant, moves the court to strike out and disregard so much of the original and amended answers filed by the defendants in this case which sets up as defence in this case:

1st. In the original answer, wherein def'ts allege that pl'ff made himself a party to the suit of D. Valentine & Co. vs. E. Dreyfus & Co., No. 1265 on the bankrupt docket of the district court, by appearing therein and claiming the ownership of the property seized under the writ issued in that suit, and praying the court to deliver over the property to him as illegally seized, for the reason that the proceeding alluded to was only a mo-
54 tion to have the property delivered to plaintiff, and not a suit at law or equity for the ownership; and even if it had been, the present suit is for damages for the illegal seizure, and not to recover the property, and the existence of such a suit does not abate or suspend proceeding in this suit.

2d. In the amended answer it is alleged that a conspiracy was formed between pl'ff Moses Feibelman and E. Dreyfus & Co. to defraud the creditors of E. Dreyfus & Co., and that the claim of doing business in a separate part of the same house with Moses Feibelman by plaintiff was a sham and a part of the conspiracy, and that the removing of merchandize from E. Dreyfus & Co. by M. Feibelman was in furtherance of such conspiracy, and that the acts of Moses Feibelman were the acts of M. Feibelman, and that this suit was brought in furtherance of the conspiracy, and that the marshal in seizing the goods in this case only obeyed the writ (the amended answer is here referred to for a more full statement of its purport), for the reason that such an issue cannot legally be raised in this case, the
55 only question being as to whether plaintiff was in the possession of the goods seized as owner, and exercising dominion over them; that the def't in this case does not represent the assignee or creditors, and cannot raise or litigate the question of pl'ff's ownership of the goods; that

whether the plaintiff was in possession in good or bad faith his possession cannot be disturbed by a seizure under a writ for the seizure of the property of E. Dreyfus & Co.

Wherefore pl'ff prays that said portions and issues raised in defendants' answer and amended answer be stricken out and disregarded on the trial of this case.

(Signed) JOHN RAY,
Do. WILLIAM GRANT,
Of Counsel.

Marshal's return.

Rec'd Jan'y 27, 1880, by the U. S. marshal, and on Jan'y 28, 1880, I served a copy of the within motion on Cotton and & Levy, att'ys, by delivering the same to Judge Cotton in person, a member of said law firm, in the city of New Orleans.

(Signed) THOMAS BOSWELL,
Dy U. S. Marshal.

56 *Order to strike out portion of defendants' answer.—Extract from minutes, November term, 1879.*

NEW ORLEANS, *Saturday, January 31st*, 1880.

Court met pursuant to adjournment.
Present, Hon. W. B. Woods, circuit judge.

NATHAN FEIBELMAN
vs.
S. B. PACKARD ET ALS. } No. 7398.

This cause came on to be heard upon the plaintiff's motion to strike out certain portions of this defendant's answer, and was argued by counsel. Whereupon and upon consideration thereof it was ordered by the court that said motion be sustained so far as the plaintiff made himself a party in the bankrupt court, and accordingly that the following portions of the defendants' answer be stricken out from the record, to wit: "That afterwards and on or about the 25th day of March, 1875, the said plaintiff, by his counsel, did, as he legally might, voluntarily appear in said cause of
57 D. Valentine & Co. vs. E. Dreyfus & Co. in said bankrupt proceedings, and then and there by written allegations in that behalf make and submit to the court a claim and demand for custody of the goods, chattels, and property so in the possession of the court as aforesaid, the said goods and property so then and there claimed and sued for being the same goods and chattels named and described in the said plaintiff's petition herein, and in said proceedings did set up and aver that the same were the property of him, the said Nathan Feibelman; that issue was in said cause duly made, tried, and submitted to the court for deliberation, and that the judgment and decision of the said court in the premises has not as yet been made and delivered, but is still pending and undetermined.

"Wherefore said defendants say that the said plaintiff herein having so submitted to the said district court of the United States the adjudication of his alleged right to the possession and ownership of the said property

described and set forth in his said petition, is estopped and barred from any attempt to try his alleged title to said goods and property in any indirect or collateral way or proceedings, or by this action against
58 these defendants, for claiming, averring, or demanding any alleged damage or injury for any alleged taking or detention of any property whatsoever under or by virtue of said writ, until the said district court of the United States shall have determined and adjudged the said question and issue, whether the said plaintiff herein has or had any right, title, or interest in or to said property so seized under said writ as aforesaid."

It is further ordered that in other respects said motion be overruled.

Verdict.—Extract from the minutes of February 26th, 1880.

NATHAN FEIBELMAN
vs. } No. 7398.
S. B. PACKARD ET ALS.

The court resumed the trial of this cause from yesterday, and said counsel for the said parties respectively, as well as the said jurors, being all present, the trial was proceeded with; and after hearing further argument on behalf of defendants and plaintiff herein, and receiving a
59 charge from the court, the cause was submitted to the jury, who thereupon retired to consider on their verdict.

After due deliberation the said jury returned into court, and then and there, thro' their said foreman aforesaid, did render and deliver the following verdict, to wit:

We, the jury, find for the defendants.

New Orleans, February 26th, 1880.

W. S. BAILEY, *Foreman.*

And the said jury having so found, rendered, and declared their said verdict aforesaid, counsel for the plaintiff, as well as said plaintiff, being absent, and not responding after being duly called, it was ordered by the court that said jury be polled; and on being in due form of law severally called upon and interrogated, each of said jurors for himself, then and there, in open court, did declare the said verdict to be his true verdict in the premises, and thereupon the court did then and there order the said verdict to be recorded, and it is done accordingly, and that the said jury be discharged from the further consideration of this cause.

60 *Judgment.—Extract from judgment-book, November term, 1879.*

NEW ORLEANS, *Thursday, February 26, 1880.*

Court met pursuant to adjournment.

Present, Hon. W. B. Woods, circuit judge.

NATHAN FEIBELMAN
vs. } No. 7398.
S. B. PACKARD ET AL.

By reason of the verdict of the jury herein, and in accordance therewith:

It is ordered, adjudged, and decreed that there be judgment against the said demand of Moses Feibelman, administrator of the estate of Nathan Feibelman, deceased, with costs, and that the said defendants do have and recover of and from the plaintiff all their costs expended herein, to be taxed, and that they have execution therefor.

Judgment rendered February 26, 1880.

Judgment signed March 2d, 1880.

(Signed) W. B. WOODS, *Judge.*

61 *Bill of exception No. 1.—Filed March 6th, 1880.*

U. S. circuit court dist. of La.

NATHAN FEIBELMAN }
vs. }
S. B. PACKARD ET AL. }

Be it remembered that on the trial of the abave-entitled cause that def't offered in evidence a protest made by Moses Feibelman against the seizure and occupation of the storehouse, as per annexed copy of protest, marked "A." Also an inventory of the estate of Nathan Feibelman (copy hereto annexed, marked "B"; also appointment of assignee of the estate of the bankrupts E. Dreyfus & Co., hereto annexed, marked "C"; also the assignment of the estate of the bankrupts E. Dreyfus & Co. to the assignee, marked "D"; also the petition of Moses Feibelman in the case of Moses Feibelman vs. S. B. Packard et al., #7397, hereto annexed, marked "E," to the introduction of which pl'ff objected on the ground that these papers and documents were in no manner connected with any act of Nathan Feibelman, he not being a party to my nor privy to any of them,
62 and they having no connection with the subject-matter of this suit, which objections were overruled, and the evidence admitted; to which ruling of the court plaintiff excepted and tended this his bill of exceptions, which is accordingly signed on this day of February, 1880, in open court.

Proof was offered in this case that no other written protest was made by either Moses or Nathan Feibelman, or any one else, against the seizure of the property by the marshal.

(Signed) W. B. WOODS, *Judge.* [SEAL.]

Protest of Moses Feibelman.—Referred to in foregoing bill of exception.

UNITED STATES OF AMERICA,
State of 'Louisiana, Parish of Madison:

By this public instrument of protest be it known that on this seventh day of March, A. D. 1873, at the request of Moses Feibelman (owner), a citizen of the parish of Madison and State aforesaid, I, Alexander V. Brown, recorder and ex officio notary public in and for the parish
63 of Madison and State of Louisiana, duly commissioned and qualified, proceeded to the storehouse of the said Moses Feibelman, in the town of Delta, in said parish of Madison, and finding therein one E. E. Guion claiming to be a deputy marshal of the United States, holding possession of the storehouse aforesaid, and all the goods, wares, merchan-

dise, furniture, and fixtures therein contained, and pretending to hold the same under and by virtue of a writ of provisional seizure, issued from the district court of the United States for the district of Louisiana, a copy of which is hereunto written, I then and there demanded of the said E. B. Guion, possession and full restitution of the said storehouse, goods, wares, merchandise, furniture, and fixtures therein, by tendering to him the notice of which a copy is herein below written, and a duplicate of which is hereto annexed, and I was answered by the said E. B. Guion that he would not receive any notice or papers of any kind, the doors being closed and locked, and refusing to open the same, being on the inside; I
64 pushed the notice under the door, whereupon I, the said recorder and ex officio notary public, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the said E. B. Guion as against all others whom it doth or may concern, for all losses, damages, interests, costs, charges suffered or to be suffered in consequence of the tortuously and unlawfully withholding from him, the said Moses Feibelman, his said storehouse, goods, wares merchandise, furniture, and fixtures therein. This done and protested in the presence of James W. Henderson and William S. Preston, competent witnesses.

In testimony whereof I hereunto set my hand together with witnesses, in the parish of Madison, on the day, month, and year first written.

A. V. BROWN, *Recorder.*

Witness—

JAMES W. HENDERSON.
WILLIAM S. PRESTON.

DELTA, *March 7th*, 1873.

To E. B. GUION, Esq., *Deputy U. S. Marshal*:

DEAR SIR: I demand immediate possession of my store-
65 house, goods, wares, merchandise, furniture, and fixtures therein, which you pretended to hold under and by virtue of a writ of provisional seizure, issued from the district court of the United States for the district of Louisiana, in the case of D. V. Valentine & Co. vs. Dreyfus & Co., No. 1265, bearing date January 21st, 1873. Your seizure of the above property is tortious and illegal, and I hold you and all others concerned liable for all losses, damages, interest, costs, and charges suffered or to be suffered, for or in consequence of said illegal seizure.

Respectfully,
(Signed) MOSES FEIBELMAN.

UNITED STATES OF AMERICA:

District court of the United States, district of Louisiana.

P. VALENTINE & CO. ET ALS. *vs.* E. DREYFUS & CO. } No. 1265.

The President of the United States to the marshal of the United States for the eastern district of Louisiana, greeting:

You are hereby commanded in the name of the United States and of our district court to take possession of all property, real or personal, be-

longing to the firm of E. Dreyfus & Co. and to Emanuel Dreyfus, Marcus Wiel, Mrs. Fannie Weil, widow of C. Weil, and Caroline Weil,
66 widow of Sam. Weil, the individual members of said firm, and of all the books of account, bank books, and papers relating to the business of said firm in whose hands soever you may find the same within your district, and particularly the goods, wares, and merchandise pretended to have been transferred and sold by the defendants to Moses Fiebelman, of Delta, and hold the same subject to the further order of the court.

Witness the honorable E. H. Durell, judge of said court, at New Orleans this 21st day of January, 1873.

[SEAL.] (Signed) K. LOEW, *D'y Cl'k.*

I gave notice thereof to S. B. Packard, U. S. marshal for the district of Louisiana, by written notice addressed to him, New Orleans, La., and to D. Valentine & Co. et als., by written notice directed to them at the city of New York, N. Y., where I was informed by inquiry made that they resided, which notices I deposited in the post-office at Delta, La., duly stamped, in time to be forwarded by the next mail after said protest.
67 Given under my hand 2d day of March, 1873, and the seal of my office hereto affixed.

Recorder March 10th, 1873.

STATE OF LOUISIANA,
Parish of Madison:

I, Robert Barnes, recorder in and for the parish of Madison and State of Louisiana, do hereby certify that the foregoing is a true and correct copy of protest of Moses Feibelman vs. E. B. Guion and of notice and of writ, of record in my office the 10th of March, 1873.

Testimony whereof I have affixed my signature and seal of office this the 16th day of Feb'y, 1880.

[SEAL.] (Signed) ROBERT BARNES, *Recorder.*

Copy of inventory referred to in and made part of foregoing bill of exceptions.

STATE OF LOUISIANA,
Parish of Madison:

SUCCESSION OF NATHAN FEIBELMAN, DECEASED. } No. 265.

68 Be it known that on this 13th day of September, A. D. 1877, in pursuance of the annexed commission to me directed, authorizing and requiring me to make an inventory estimative and descriptive of all the property, effects, rights, and credits belonging to the succession of the late Nathan Fiebelman, deceased, and situated within this parish, I have appointed Samuel Cohn and James J. Dundas appraisers, both duly qualfied and residents of said parish and State, to whom I administered the following oath:

I do solemnly swear that will a just appraisement make and true cash value place on all the property, effects, rights, and credits belonging to the succession of the late Nathan Feibelman, deceased, that may be presented

for my consideration to the best of my knowledge and understanding. So help me God.

SAM'L COHN.
JAMES J. DUNDAS.

Signed and sworn to before me this 13th day of September, A. D. 1877.
(Signed) S. S. P. DANGERFIELD,
Notary Public.

69 After which we proceeded to make the following inventory:

1ST REAL ESTATE.

The following description of property, situate in the town of Delta, in the parish of Madison, State of Louisiana, to wit:

Lots four and five, in block sixty-one, as will appear on the plat of said town, made by John W. Green, civil engineer, and now on file in the recorder's office, in the parish of Madison, and being the same lots acquired by purchase from John T. Ludeling, together with all the buildings and improvements thereon or thereunto belonging, valued at twelve hundred dollars	$1,200 00
Also part of square No. 48, commencing at a point sixty feet from the northeast corner of said square, thence running south thirty feet on west side of First street; thence west one hundred and twenty feet, to an alley; thence on east side of said alley north, thirty feet; thence east to place of beginning, valued at eig' hundred dollars	$800 00
Total valuation of real estate	$2,000 00

70 2D. STOCK OF GOODS IN STORE.

9 bbls. meal	22 50
1 " flour	6 25
3 ½ " do.	9 75
2 sacks bran	3 00
4 " salt	5
100 lbs. flour	3
150 " rice	7 50
71 " soda crackers	2 75
100 " cream do.	5
58 " 11 in. plug tobacco	14
270 " soap	10 80
24 " starch	1
150 " nails	4 50
8 bottles bitters	3 20
5 " schnapps	2
10 " bitters	4
5 " brandy	1 25
3 " do. cherries	90

13	" do. peaches	3	25
1	" pickles		25
1	" olives		15
6	" pepper sauce		35
15	cans pears	3	
7	" pine apples	1	40
30	" yeast powders	3	
16	boxes axle grease	1	60
20	" lye	3	
½	gross matches		35
	6 doz. blueing		60
71	5 lbs. pepper	1	
	5 " spice	1	
800	" meat	40	
2	brooms		30
1	doz. axe-handles	1	70
28	gal's ginger wine	21	
28	" lemon cordial	21	
13	" whiskey	11	70
13	" do.	11	70
593	yd's bagging	70	16
50	lbs. hemp twine	5	
½	bdle. cotton-ties	1	25
16	gal's vinegar	1	60
1½	sacks shot	3	
3,000	d. g. caps		75
8	boxes water-proof caps		80
5	glass lamps	2	25
2	brass do.		30
9	sugar bowls	1	35
2	doz. cups & saucers	1	00
11	" " "	2	75
3	" " "		75
1	lot crockery	2	50
6	cedar buckets	1	50
2	water do.		30
6	one gal. oil cans	1	80
5	½ " do. do.	1	
16	coffee pots	3	20
4	tin buckets		40
	11 milk cups		55
72	16 small tin buckets		80
	3 stew pans		60
4	milk buckets, with strainers	1	
2	tin buckets		30
1	lot tin cups		50
9	tin dippers		45
3	milk cans		60
6	" "		90
2	" "		20
2	" "		20

2	" "		20
4	wash "		40
13	" "		65
1	lot tin plates	1	
1	" hardware	1	25
1	wr. paper & bags	4	
135	lbs. pot. ware	2	70
14	chambers	3	50
50	gal. jugs	2	50
85	lbs. flat irons	3	45
4	iron hoes	1	
12	sub. do.	3	60
1	axe		50
1	rifle	1	
1	shot gun	2	
2	pistols	4	
1	side saddle	3	
6	back bands		90
4	halters	1	
	2 bridles		60
73	4 head stalls	1	
	6 do. do.	1	50
1	pr. saddle-bags	1	50
5	buggy whips		50
1	set dray harness		75
1	lot rope halters	2	50
6	mirrors	1	20
1	"	1	20
1	"		15
4	"		10
4	wash-bowls & pitchers	1	60
1	do.		20
17	Jap. candle-sticks		85
3	whitewash brushes		75
8	trunks	4	
3	railroad bags		75
15	carpet "	1	50
7	valises	2	80
5	prs. scissors		25
8	pocket-knives		80
7	" "		35
5	knives & forks		50
1	doz. iron spoons		15
3	bedsteads	6	
3	mattrasses	3	
246	yds. calico	13	30
58	" "	2	90
100	" cambric	5	00
150	" stripes	12	
	45 " wool lindsey	4	50
74	130 yds. cotton lindsey	10	40
	16 yds. dress goods	1	60

15	"	white flannel	1 50
15	"	" do.	1 75
6	"	red do.	75
3	yds.	denims	25
55	"	coat lining	2 75
180	"	osnaburgs	18 40
224	"	brown cotton	11 20
6	"	brown sheeting	30
124	"	quilt lining	3 72
12	"	cotton berege	2 40
48	"	silk berege	14 40
35	"	doeskin cassimere	7
35	"	yeans	7 50
53	"	ticking	5 30
4		corsets	2
8		shawls	4
2		do.	50
7		balmorals	2 10
5		tuck-bows	25
3		ladies' hats	1 50
5		misses' hats	1 25
4		ladies' "	40
7		" belts	70
1		lot ribbons	1 50
5		watch chains	50
1		lot jewelry	2 50
3	doz.	finger rings	75
		5 watch guards	25
75		4 bead necklaces	20
		1 box violin strings	50
5	doz.	" paper collars	2 85
1		gross horn buttons	50
8		boxes hooks & eyes	25
1	doz.	specks	1
2		tooth brushes	50
1	lb.	flax thread	1 00
1		lot spool cotton	1
1½	lbs.	ball thread	40
1		lot shoe strings	25
2		hair nets	20
2½	doz.	ladies' hose	1 50
2	"	men's "	80
1½	"	misses' "	40
15		nubias	1 50
3		child's wool sacks	45
9	"	" caps	90
5	p'rs	buck gauntlets	1 50
11	"	" gloves	1 75
7	"	damaged kid gloves	70
3	"	white " "	75
2	"	suspenders	20

6	pocket combs	30
1	lot handkerchiefs	60
7	packs cards	70
16	fancy shirts	1 75
1	lot edging	25
1	" trimming	25
	15,000 needles	1
76	5 wool over shirts	1 25
	5 " " "	1 25
7	" " "	1 40
10	" " "	2 20
12	" " "	3 60
12	p'rs drawers	1 20
2	cardinal jackets	1
1	p'r cashmere pants	50
1	" " "	50
3	" " "	1 50
1	" black "	50
5	" coats	5
1	" "	50
1	" "	75
2	" "	1 80
1	" "	1 25
6	"	2 40
4	over do.	8
1	" "	2 75
1	lot hats	4 50
6	wool "	2
15	" "	3 75
9	plush "	2 70
4	wool "	1
12	cashimere "	6
4	wool "	1
4	grey "	1
1	lot caps	3
3	p'rs misses' shoes	1 50
	1 " ladies' calf "	75
77	2 p'rs ladies kip shoes	1 50
	2 " " " "	1 50
2	" " " "	1 50
3	" infants " "	75
19	" children's " "	3 80
1	" men's plow " "	75
1	" " brogans	75
1	" " gaiters	1
3	" boys' brogans	1 20
2	" women's peg calf shoes	1
5	" boys' calf shoes	3 75
5	" " boots	1
1	" men's "	1
1	show case	5

1 dray		5
1 cart		7
Jackson's sheriff's note for $33, due 15th day of Nov., 1877, valued at		1
Henry Harris' due bill $15, due January, 1877, valued at		1
Sampson Jones' note for $20, due 1st Oct., 1877, valued at		5
J. & W. J. Guber's note for $136.95, due 1st Nov., 1877, valued at		15
Betsey Pendleton & others' note for 150, due 15 Oct., 1877, valued at		40
Geo. Booker's note for $125, due Oct. 15, 1877, valued at		25
78 Emperor Satterfield's note for $23, due on demand, valued at		3
Jack Finley's note for $7.25, due on demand, valued at		50
Paul Cales' due bill for $9.10, valued		50
C. McRussell, due bill for $12.10. valued at		10
Jerry Hunter's note for $15, due 15 Oct., 1877, valued at		50
Bell and Robinson's note for $13, due 1st Oct., 1877, valued at		1
Sam Friendley's note for $18, due 1st Oct., 1877, valued at		1
Sam Thompson's note for $7.50, due 1st Oct., 1877, valued at		50
Henry Davis' note for $31.55, due 1st day after date valued at		31 50
Robt. Green & Sampson Jones' note for $150, due 1st Nov., 1877, valued at		1
79 Jasper Taylor's note for $30, due 1st Oct., 1877, valued at		10
G. J. W. Perkins' note for $28.72, due 1 day after date, valued at		2 50
J. P. Seale, note for $22.68, due on demand, valued at		1
W. R. J. Clemens' due bill for $178.30, valued at		5
Griffin Taylor & Ed. Morgan's note for $58, due 15 Oct., 1877, valued at		5
W. W. Johnson's note, payable at W. H. Green's, for $26, due 21st of March, 1877, valued at		50
R. H. Hers' order on Hewett for $20, accepted, valued at		5
One lot merchandise acc'ts as taken from the books of Nathan Feibelman, deceased, amounting to $3,874.57, valued at		800
One lot of household and kitchen furniture, valued at		200
One cow and calf, valued at		15
80 A lot of old judgments against various persons, amounting to $690.65, valued at		56 50
Total		$3,918 98

RECAPITULATION.

1st. Real estate	$2,000
2. Stock of goods	1,918 98
	$3,918 98

And this being all the property to our knowledge situated in the parish belonging to the succession of Nathan Feibelman, deceased, we close this inventory, the total amount of which is $3,918.98, on the day and date first herein written, in presence of Ed. C. Wilmore and Joseph Feibelman, competent witnesses, who sign with the said notary after due reading hereof.

(Signed) J. J. DUNDAS.
SAM'L COHN.

Witnesses:
E. C. WILMON.
JOS. FEIBELMAN.

S. S. P. DANGERFIELD,
Notary Public.

13th district court, clerk's office.

I hereby certify that the foregoing is a true copy of inventory in succession of Nathan Feibelman, deceased, now on file in this office.

[SEAL.] (Signed) H. B. HOLMES,
Clerk 13th Dist. Court, Madison Parish, La.

Appointment of assignee of the estate of the bankrupts E. Dreyfus marked "C," and referred to and made part of bill of exceptions No. 1.

[Form No. 18.]

ASSIGNMENT OF BANKRUPTS' EFFECTS.

In the district court of the United States for the district of Louisiana.

IN THE MATTER OF H. B. CLAFLIN & CO., *vs.* E. DREYFUS & CO., BANKRUPTS. } In bankruptcy.

DISTRICT OF LOUISIANA, *ss:*

Know all men by these presents that David Wallace, of the city of New Orleans, in the parish of Orleans and State of Louisiana, in said district, has been duly appointed assignee in said matter.

Now, therefore, I, C. S. Kellogg, register in bankruptcy of said district, by virtue of the authority vested in me by the 14th section of an act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 20, 1867, do hereby convey and assign to the said David Wallace, assignee as aforesaid, all estate real and personal of the said E. Dreyfus & Co., bankrupt aforesaid, including all the property of whatever kind of which they were possessed, or in which they were interested or entitled to have on the 6th day of February, A. D. 1873, with all his deeds, books, & papers relating thereto, excepting such property as is exempted from the operation of this assignment by the provisions of said fourteenth section of said act: to have and to hold all the foregoing premises to the said David Wallace

and his heirs forever, in trust, nevertheless, for the use and purposes with the powers and subject to the conditions and limitations set forth in said act.

In witness whereof I, the said register, have hereunto set my hand & caused the seal of said court to be affixed this 4th day of December, A. D. 1873.

[SEAL.] (Signed) C. S. KELLOGG,
83 *Register in Bankruptcy.*

A true copy.
(Signed) C. S. KELLOGG.

Exhibit marked "D," referred to and made part of bill of exceptions No. 1, is an exact copy of foregoing assignment.

Petition in suit of Moses Feibelman vs. S. B. Packard et als., referred to and made part of bill of exception, No. 1.—Filed April 24, 1873.

4' district court for the parish of Orleans.

MOSES FEIBELMAN & ALS.
vs.
S. B. PACKARD & ALS. } No. 41801.

To the honorable the judge of the fourth district court in and for the parish of Orleans, in the State of Louisiana:

The petition of Moses Feibelman and George Voelker, residents of the parish of Madison, in the State of Louisiana, who are partners, and doing a commercial business in said parish of Madison, at the town
84 of Delta, respectfully represents unto your honorable court that they have been engaged for last two years as merchants in a general receiving and forwarding and commercial and mercantile business in said town of Delta, keeping on hand for wholesale and retail a general assortment of liquors, provisions, and groceries of every kind, and were doing an extensive and lucrative business in furnishing country merchants, plantations, and families with supplies, as well as a local retail business, amounting annually to seventy thousand dollars, and annually increasing.

Petitioners represent unto your honors that on or about the third day of March, A. D. 1873, and during their absence from Delta, S. B. Packard, United States marshal for the District of Louisiana, by his deputy, C. R. Steel, seized and took forcible possession of their entire stock of goods, wares, and merchandise, as above described; also of their store-house, together with their safe, books, notes, accounts, horses, mules, buggy, drays, and eight bales of cotton, besides much property belonging to other persons in the possession of petitioners as agents, and closed their
85 store-house, which has caused an entire suspension of petitioners' said business; all of which is yet held in possession by said marshal or his deputies, and of which petitioners have been entirely deprived up to this time.

Petitioners further represent that said seizure by said Packard, marshal, and his deputies, purports to have been made under and by virtue of a writ issued by the judge of the district court of the United States for the district of Louisiana, in the suit entitled D. Valentine & Co. & als. vs. E. Dreyfus & Co., No. 1265 in the docket of said court, in bankruptcy, by which writ the said marshal was directed to seize the goods and effects of E. Dreyfus & Co.; a copy of which writ is hereto annexed and made part of this petition.

Petitioners represent that no demand was made by said marshal or his deputies of petitioners to point out or deliver to them any goods, wares, or merchandize which belonged to E. Dreyfus & Co., or which they may have acquired from said E. Dreyfus & Co.; but that said marshal,
86 or his deputies, regardless of the rights or interests of petitioners, or of the requirements of said writ, forcibly seized and took possession of all your petitioners' goods, wares, and merchandize as hereinbefore set forth, and closed up their said store-house; also seizing and taking possession of the books, notes, accounts, safe, one horse, three mules, one buggy, and eight bales of cotton, and a number of other things not classed as goods, wares, or merchandize, all the property of petitioners, none of which was authorized to be seized by said writ, altogether to the value of about $13,000; nor did said writ authorize said marshal or his deputies to close up their store-house.

Petitioners further aver none of said acts of said S. B. Packard, marshal, or of C. R. Steel, his deputy, or any other deputy authorized by said writ, and were illegal and oppressive and greatly damaged your petitioners; and further your petitioners aver that all the goods, wares, and merchandize and other things seized by said marshal, or his deputies, as above set forth, were the sole and bona fide property of your petitioners, and
87 not the property of E. Dreyfus & Co., or of either of the members of that firm, and in or to which they had no interest, and that said marshal or his deputies seized them even if he pretended to act under said writ at his own risk, forcibly and wrongfully.

Petitioners further aver that by said illegal seizure of their goods, wares, and merchandize, and other property as hereinbefore described, and the closing up of their store-house, has caused them great damage in the items, particulars, and amounts following, viz:

ITEM FIRST.—That in depriving petitioners of the use and possession of their goods, wares, and merchandize, and other property as hereinbefore set forth, and closing up of their storehouse, their regular receiving and forwarding business, and the business of supplying planters for the current year, and the furnishing supplies to interior merchants and families, as well as the profits accruing from their retail business, in Delta, has been entirely ruined and suspended, by which they have suffered dam-
88 age in the sum of $20,000.

ITEM SECOND.—That by the seizure of their goods, wares, and merchandize and other property, and closing up their store-house, as hereinbefore described, they have not been enabled to meet their obligation' given for the purchase of goods and effects for sale in their regular course of business, and has destroyed their credit in St. Louis, New Orleans, and other wholesale markets, and elsewhere where they were in the habit of purchasing stock, and thereby broke down their credit and business, and which has caused them damage in the sum of twenty thousand dollars.

ITEM THIRD.—That much of the goods, wares, and merchandize seized as aforesaid are of a perishable character, and are liable to injure, if not attended to daily; such articles as potatoes, meat, apples, corn, and various others of a like nature are entirely destroyed if kept long on hand, and if not, they are only saleable at particular seasons, and if not then disposed of greatly depreciates in value; that petitioners have suf-
89 fered, and are still suffering great damage in their goods, wares, and merchandize from the causes herein stated, to the amount of at least two thousand ·; and if by cause of said seizure their entire stock of merchandize is lost or destroyed, they claim the value thereof as hereinbefore stated.

ITEM FOURTH.—That petitioners are informed and believe and so charge that a considerable amount of the goods, wares, and merchandize in their said store-house at the time it was taken possession of by the deputy marshal has been stolen or destroyed to the value of at least one thousand dollars. Petitioners are not now prepared to give a list and invoice of such articles stolen or destroyed, but reserve the right to furnish such list and invoice hereafter, as they are not yet in possession of their store-house so as to ascertain the full facts.

ITEM FIFTH.—That in order to obtain possession of their goods, &c., and store-house seized as aforesaid, petitioners have been compelled to employ counsel to appear in the United States district court of Louisi-
90 ana in the suit in which said seizure was made to obtain the possession of their said property and store-house, and for the services of which counsel petitioners have been compelled to pay one thousand dollars, which is a direct damage resulting from said illegal seizure.

ITEM SIXTH.—That in order to obtain indemnity for the damages resulting from said illegal seizure of their goods and store-house, petitioners have been compelled to employ counsel to bring and conduct this suit, which will cost them twenty-five hundred dollars, and which is a damage resulting from said illegal seizure and which is claimed by petitioners in this case.

ITEM SEVENTH.—That petitioners have been compelled to incur heavy costs in travelling expenses, hotel bills, and other necessary expenses in obtaining possession of their said goods, &c., and store-house, and having the seizure thereof discharged, amounting to the sum of one thousand dollars, and that they will have to incur like expenses in attending to this suit, which is a damage to your petitioners in obtaining their just
91 rights, and which is herein claimed.

ITEM EIGHTH.—That the necessary labor and expense incurred in defending said seizure or obtaining possession of their said goods and store-house by petitioners amounts to the sum of five hundred dollars, which is claimed as damages in this suit.

Petitioners aver that S. B. Packard is legally and personally responsible to your petitioners for each and every item of damages above itemized and set forth, and that said Packard, as United States marshal of the district of Louisiana, and Michael Gernon and W. R. Fish, his sureties on his official bond as marshal, all residents of the parish of Orleans, in said State, are legally bound in solido for the damages herein itemized and set forth, a copy of which official bond is hereto annexed and made a part of this petition.

Wherefore petitioners pray your honorable court to cause said S. B. Packard, Michael Gernon, and W. R. Fish to be cited to appear and answer hereto, and that on a final hearing that petitioners have and
92 obtain judgment in solido against said parties in the several sums itemized and set forth in this petition, with all costs of this suit, and for general and equitable relief, &c.

(Signed)
(do.) JOHN RAY,
(do.) R. G. COBB,
WM. GRANT,
Att'ys.

Bill of exceptions No. 2.—Filed March 6th, 1880.

U. S. circuit court, district of Louisiana.

NATHAN FEIBELMAN
vs.
S. B. PACKARD ET AL. } No. 7398.

Be it remembered that on the trial of the above-entitled cause plaintiff, by his counsel, offered J. C. Seale, an attorney at law, to prove what would be a reasonable attorney's fee for preparing and filing the motion entitled D. Valentine & Co. vs. E. Dreyfus & Co., motion of Nathan Feibelman to set aside seizure and give bond, filed March 25, 1873, which is hereto
93 annexed and made a part of this bill of exception, together with the order of court showing that this motion was tried and submitted to the court, and for attending to the trial of said motion in court, and also to prove by said witness what the traveling expenses and expenses attendant on travelling from Delta, La., to New Orleans, where the court sets in which said motion was made, including hotel bills and other necessary expenses in making such trips to attend to said motion, and to obtain the release of his property from seizure, said witness being a resident of Delta, La., to which evidence defendant objected on the grounds:

First. That the attorney's fee and travelling expenses, as set out above, were not of the character of damages that were properly allowable in a case of the kind before the court, altho' specially claimed by pl'ff in this suit as direct damages resulting from the illegal seizure of plaintiffs' property.

Which objections were sustained by the court and the testimony rejected; to which ruling of the court plaintiff excepts and tenders this bill of
94 exception, which is accordingly signed in open court on this day of February, A. D. 1880.

(Signed) W. B. WOODS, *Judge.* [SEAL.]

Motion to set aside seizure, &c.—Referred to and made part of foregoing bill of exceptions.

D. VALENTINE & Co.
vs.
E. DREYFUS & Co. } No. 1265. In bankruptcy.

In the matter of E. Dreyfus & Co., against whom a petition for adjudication of bankruptcy has been filed.

Now comes Nathan Feibelman, by his attorneys, John Ray, R. G. Cobb,

and William Grant, who represents to this honorable court that he is a merchant residing and doing business at the town of Delta, in the parish of Madison, in the district of Louisiana.

That about the month of July, A. D. 1872, this appearer rented from Moses Feibelman one-half of his large store-house in said town of
95 Delta, and fitted the same up suitable for his business and opened a large stock of merchandize therein to the invoiced value of about eight thousand dollars, about the month of September, 1872; that he was proceeding in his business uninterruptedly until about the 3d March, A. D. 1873, when the marshal of the district of Louisiana, S. B. Packard, by his deputy, C. R. Steel, took possession of his entire stock of merchandise in and about his said store, with his commercial books, assets, and papers, and closed up his store and entirely suspended his business.

That said seizure was made under and by virtue of a writ issued in this case, to wit, D. Valentine & Co. vs. E. Dreyfus & Co., No. 1265 on the docket of this honorable court, directing the seizure of all the effects of E. Dreyfus, and particularly the goods, wares, and merchandize pretended to have been transferred and sold by the defendants to Moses Feibelman, of Delta.

This appearer represents that he never acquired, by transfer or
96 sale, any of the merchandize seized in this case from E. Dreyfus & Co., or either of the members of said firm; that he procured all the merchandize so seized in the usual course of trade for the purposes of resale in his business, and that E. Dreyfus & Co., nor any member of said firm, ever furnished him with any part of the same, nor is he indebted to them in any amount, and that the seizure of his said store and merchandize was without any legal authority or writ justifying it.

Wherefore this appearer moves this honorable court to set aside the said seizure of appearer's store and merchandize, and order the same to be delivered over to your appearer, and that until his motion can be tried that your honorable court authorize and direct the marshal to release said store and seizure upon this appearer entering into bond in such amount as your honorable court may fix, conditioned according to law.

Appearer prays that an early day be fixed for the trial of this
97 motion, and that the plaintiffs in this case or their counsel and the marshal be notified of this motion, and the time fixed for its trial.

Appearer finally prays for all rules and orders in the premises which may be legal and proper, &c.

(Signed) JOHN RAY, *Att'y.*
Do. R. G. COBB, *Att'y.*

Let this motion be argued on to-morrow 26th inst., at 11 a. m.
March 25, 1873.

(Signed) E. H. DURELL, *Judge.*

Bill of exception' No. 3.—Filed March 6th, 1880.

U. States circuit court, dist. of La.

NATHAN FEIBELMAN
vs. } 7398.
S. B. PACKARD, ET AL.

Be it remembered that on the trial of the above-entitled cause:

98 that pl'ff propounded to J. S. Richardson the following questions.

1. You have already stated that the seizure of pl'ff's goods and the taking possession of and closing up his store-house had the effect of entirely breaking up his business at Delta, La.; if so, did it or not cause pl'ff any other damage than the loss of his property seized or its value?

2. You say that the plaintiff did sustain other damages than the loss of the property seized on account of the seizure of his property and the taking possession of his store-house, and closing it up; please state in what that damage consisted, the different items of damage.

These questions were objected to, but the court permitted them to be answered and the witness answered as follows:

He answered: "the loss of credit; the loss of profits on the goods that would have been sold during the time of the seizure, and the loss of his place of business."

Pl'ff then asked the witness the following question:

99 Please state the amount of damage pl'ff sustained under each item of damage, as you have already stated that is what was the amount of damage under each item.

Defendant objected to the witness answering this question, which objection was sustained by the court so far as to limit his answer to the item of loss of credit sustained *an amount* of the seizure.

To which ruling of the court pl'ff excepted and tenders this his bill of exception, which is accordingly signed in open court on this day of February, 1880.

(Signed) W. B. WOODS, *Judge*. [SEAL.]

Bill of exception No. 4.—Filed March 6th, 1880.

U. S. circuit court, dist. of La.

NATHAN FEIBELMAN
vs.
S. B. PACKARD ET AL.

Be it remembered that on the trial of this case def'ts offered Marcus Weil a witness, to prove the transactions between the firm of
100 E. Dreyfus & Co. and Moses Feibelman, in the years 1872 and 1873, to which evidence pl'ff objected on the ground—

That if this evidence is sought to charge Nathan Feibelman, pl'ff, as a co-conspirator, as charged in defendant's amended answer for the acts of E. Dreyfus & Co. and Moses Feibelman, that before the acts and declarations of the alleged coconspirators can be given in evidence to the jury that a foundation must be laid by proving the alleged conspiracy, which had not been done when this evidence was offered nor had it ever been attempted.

That this being a suit for damages for tresspass, that evidence of other acts than those charged as the acts of tresspass, and at other times and places was not legal evidence against pl'ff in this case even in mitigation of damages.

But before the deponents closed their evidence they submitted testimony tending to show that the said Nathan Feiblman had engaged with
101 the said Moses Feibelman and E. Dreyfus & Co. in the conspiracy set out in the amended answer of defendants, and which in the opinion of the court proved the existence of the said conspiracy.

Which objections were overruled by the court and the evidence admitted; to which pl'ff excepted and tenders this his bill of exception, which is accordingly signed on this day of February, 1880, in open court.

(Signed) W. B. WOODS, *Judge*. [SEAL.]

Bill of exceptions No. 5.—Filed March 6th, 1880.

United States circuit court, dist. of La.

NATHAN FEIBELMAN
vs.
S. B. PACKARD ET AL. } No. 7398.

Be it remembered that on the trial of the above-entitled cause that plaintiff, after proving by J. C. Seale that his business had been entirely broken up by the seizure of his entire stock of merchandize
102 and his store-house, neither of which were ever returned to him, that then pl'ff offered to prove the amount of damages he had sustained on account of being deprived of the profits he would have realized by the sale of the stock of merchandize which was seized, and of which he had been deprived by such seizure, and which damage is specially claimed in his petition in this case, to which proof def't objected, on the ground that such would be consequential damages which could not be legally allowed in this case, which objections were sustained by the court, and the testimony refused; to which ruling of the court pl'ff, by his attorneys, objected, and tenders this his bill of exceptions, which is accordingly signed in open court, on this day of February, A. D. 1880.

(Signed) W. B. WOODS, *Judge*.

103 *Petition for writ of error.—Filed March 6th*, 1880.

NATHAN FEIBELMAN
vs.
S. B. PACKARD ET AL. } No. 7398.

To the judges of the circuit court, district of Louisiana:

The petition of Moses Feibelman, administrator of the estate of Nathan Feibelman, dec'd, plaintiff in the above-entitled cause, respectfully represents that there is error in the judgment in the above-entitled cause to his prejudice.

Wherefore he prays the court to grant him a writ of error from the decree in the above-entitled cause to the Supreme Court of the United States, and that your honors fix the amount of the bond to cover costs of the appeal, and sign the necessary citations and writs of error, and do and perform all other things necessary in the premises.

(Signed) JOHN RAY,
Solicitor for Pl'ff.

Order.

104 A writ of error is allowed in this case as prayed for, and according to law, returnable to the Supreme Court of the United States on the second Monday of October, 1880, the petitioner giving bond in the sum of five hundred dollars, conditioned as the law directs.

New Orleans, March 6th, 1880.

(Signed) W. B. WOODS, *Judge*.

Bond for writ of error.—Filed May 1st, 1880.

Know all men by these presents, that we, Moses Fiebelman, administrator of N. Feibelman, as principal, and D. A. Shlenker as sure*ties*, are held and firmly bound unto S. B. Packard, Michael Gernon, and W. R. Fish, in the full and just sum of five hundred dollars, to be paid to the said Packard, Gernon, and Fish, their certain attorney, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals, and dated this 15th day of April,
105 in the year of our Lord one thousand eight hundred and eighty:

Whereas lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said circuit court, wherein Nathan Feibelman, by his administrator, Moses Feibelman, plaintiff, and S. B. Packard, Michael Gernon, and W. R. Fish, judgment was rendered against the said plaintiff, and the said plaintiff having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Packard, Gernon, & Fish admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next.

Now, the condition of the above obligation is such that if the said Moses Feibelman, administrator, shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) MOSES FEIBELMAN, [L. S.]
106 *Adm'r of Nathan Feibelman.*
(Signed) D. A. SHLENKER. [L. S.]

UNITED STATES OF AMERICA,
District of Louisiana:

Personally appeared D. A. Shlenker who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in New Orleans, and is worth the full sum of five hundred dollars over and above all his debts and liabilities and property exempt from execution.

(Signed) D. A. SHLENKER.

Subscribed and sworn before me this 15th day of April, 1880.

(Signed) T. V. COUPLAND,
Commissioner United States Circuit Court,
District of Louisiana.

Bond approved.

(Signed) EDWARD C. BILLINGS, *Judge.*

107 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 106 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had on the trial of the case of Nathan Feibelman versus S. B. Packard et als., No. 7398 of the docket said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 31st day of July, A. D. 1880.

(Nineteen words erased approved.)

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Edward C. Billings, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in the form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 31st day of July, A. D. 1880.

EDWARD C. BILLINGS, *Judge.*

108 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you or some of you, between Moses Feibelman, administrator of the estate of Nathan Feibelman, deceased, and S. B. Packard, U. S. marshal, Michael Gernon, and W. R. Fish, a manifest error hath happened to the great damage of the said Moses Feibelman, administrator of the estate of Nathan Feibelman, deceased, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held; that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 6th day of March, in the year of our Lord one thousand eight hundred and eighty.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court for the District of Louisiana.

(Indorsed:) United States circuit court. No. 7398. Moses Feibelman, administrator of the estate of Nathan Feibelman, deceased, plaintiff in error, versus S. B. Packard, U. S. marshal, Michael Gernon & W. R. Fish, defendants in error. Writ of error. Filed March 6th, 1880. F. A. Woolfley, clerk.

109 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to S. B. Packard, U. S. marshal, Michael Gernon and W. R. Fish, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Moses Feibleman, administrator of the estate of Nathan Feibleman, deceased, is plaintiff in error, and you and each of you are defendants in error, to show cause, if any there be, why the judgment rendered against the said Moses Feible man, administrator of the estate of Nathan Feibleman, deceased, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 1st day of May, in the year of our Lord one thousand eight hundred and eighty.

W. B. WOODS, *Judge.*

110 (Indorsed:) United States circuit court. R. No. 7398. Moses Feibleman, administrator of the estate Nathan Feibleman, deceased, plaintiffs in error, vs. S. B. Packard, U. S. marshal, Michael Gernon, and W. R. Fish, defendants in error. Citation.

Marshal's return.

Received May 3, 1880, by the U. S. marshal, and on May 4th 1880, I served a copy of the within writ of error on S. B. Packard, U. S. marshal, Michael Gernon, & W. R. Fish, defendants in error herein, by delivering a copy hereof L. L. Levry, of Cotton & Levry, and also to J. R. Beckwith, esq., the attorneys for the aforesaid defendants in error, in person, in the city of New Orleans, district of Louisiana.

E. S. CURRY,
Dy U. S. Marshal, District of Louisiana.

Personally appeared before me E. S. Curry, a deputy United States marshal in and for the district of Louisiana, and makes oath that he served a true copy of the within writ of error on S. B. Packard, late U. S. marshal, Michael Gernon, and W. R. Fish, defendants herein, as set forth in his official return hereon.

E. S. CURRY,
Dy U. S. Marshal, District of Louisiana.

Subscribed and sworn before me May 5th, 1880.

F. A. WOOLFLEY,
Commissioner United States Circuit Court, District of Louisiana.

(Indorsement on cover:) No. 103. Moses Feibelman, administrator of Nathan Feibelman, deceased, plaintiff in error, vs. S. B. Packard, U. S. marshal, Michael Gernon, and W. R. Fish. Louisiana C. C. U. S. Filed October 11, 1880.

109-421

FILED
SEP 21 1882
H. McKENNEY, Clerk

Supreme Court of the United States.

No. 103.

MOSES FEIBELMAN, Administator of NATHAN FEIBELMAN, Plaintiff in Error.

vs.

S. B. PACKARD, United States Marshal, MICHAEL GERNON and W. R. FISH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

Brief of John Ray, *Attorney for Plaintiff.*

Excelsior Print, 54 Exchange Alley.

109 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to S. B. Packard, U. S. marshal, Michael Gernon and W. R. Fish, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Moses Feibleman, administrator of the estate of Nathan Feibleman, deceased, is plaintiff in error, and you and each of you are defendants in error, to show cause, if any there be, why the judgment rendered against the said Moses Feible man, administrator of the estate of Nathan Feibleman, deceased, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 1st day of May, in the year of our Lord one thousand eight hundred and eighty.

W. B. WOODS, *Judge.*

110 (Indorsed:) United States circuit court. R. No. 7398. Moses Feibleman, administrator of the estate of Nathan Feibleman, deceased, plaintiffs in error, vs. S. B. Packard, U. S. marshal, Michael Gernon, and W. R. Fish, defendants in error. Citation.

Marshal's return.

Received May 3, 1880, by the U. S. marshal, and on May 4th 1880, I served a copy of the within writ of error on S. B. Packard, U. S. marshal, Michael Gernon, & W. R. Fish, defendants in error herein, by delivering a copy hereof to L. L. Levry, of Cotton & Levry, and also to J. R. Beckwith, esq., the attorneys for the aforesaid defendants in error, in person, in the city of New Orleans, district of Louisiana.

E. S. CURRY,
Dy U. S. Marshal, District of Louisiana.

Personally appeared before me E. S. Curry, a deputy United States marshal in and for the district of Louisiana, and makes oath that he served a true copy of the within writ of error on S. B. Packard, late U. S. marshal, Michael Gernon, and W. R. Fish, defendants herein, as set forth in his official return hereon.

E. S. CURRY,
Dy U. S. Marshal, District of Louisiana.

Subscribed and sworn before me May 5th, 1880.

F. A. WOOLFLEY,
Commissioner United States Circuit Court, District of Louisiana.

(Indorsement on cover:) No. 103. Moses Feibelman, administrator of Nathan Feibelman, deceased, plaintiff in error, vs. S. B. Packard, U. S. marshal, Michael Gernon, and W. R. Fish. Louisiana C. C. U. S. Filed October 11, 1880.

109-421

FILED
SEP 21 1878
H. McKENNEY

Supreme Court of the United States.

No. 103.

MOSES FEIBELMAN, ADMINISTATOR OF NATHAN FEIBELMAN, PLAINTIFF IN ERROR.

VS.

S. B. PACKARD, UNITED STATES MARSHAL. MICHAEL GERNON AND W. R. FISH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

Brief of JOHN RAY, *Attorney for Plaintiff.*

Excelsior Print, 54 Exchange Alley.

Supreme Court of the United States.

No. 103.

MOSES FEIBELMAN, ADMINISTATOR OF NATHAN FEIBELMAN, PLAINTIFF IN ERROR.

vs.

S. B. PACKARD, UNITED STATES MARSHAL, MICHAEL GERNON AND W. R. FISH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

The first point presented in this case is: Was the case legally remove from the State Court to the Circuit Court of the United States?

This suit was originally filed in the Fourth District Court for the Parish of Orleans, Louisiana, on the 24th of April, A. D., 1873, p. 5.

Plaintiff alleges that about the month of June, 1872, he rented from Moses Feibelman the one-half or rather the one side of a large store-house being about 130 feet long and 35 feet wide, in the town of Delta, Parish of Madison, Louisiana, the same was fitted up with shelves, country office, etc., etc., suitable for a *dry goods, variety* or *general assortment* store. That in September, 1872, he opened a stock

of merchandise, general assortment, except groceries, suitable for the trade of that vicinity in said store-house and was doing a lucrative and thriving business as merchant in said store until about the 3rd of March, 1873, when S. B. Packard, United States Marshal for the District of Louisiana, by his deputy Steel, seized and took forcible possession of his entire stock of merchandise, petitioner protesting, of the value of about fifteen thousand dollars and also the store-house and closed up the same and has held the same ever since in his possession, whereby, your petitioner's business as merchant has been entirely suspended and broken up at that season of the year when the best business is usually done by country merchants.

Petitioner avers that Packard and his deputy pretends to have made said seizure and taken possession of that store-house and closed it up by virtue of a warrant issued by the Judge of the District Court of the United States for the District of Louisiana, in the suit entitled D. Valentine & Co. et al, vs. E. Dreyfus & Co., No. 1265, being a suit to force said E. Dreyfus & Co., into bankruptcy, said warrant directing the Marshal to seize the effects of E. Dreyfus & Co.

Petitioner represents that all the goods, wares and merchandise so seized were his individual property and in or to which no other person has any right or title, that no part of said effects were acquired by him from E. Dreyfus & Co., or any member of that

firm that he never, by himself or any agent, had a business transaction with E. Dreyfus & Co., or any member of that firm. That he is not in any manner connected directly or indirectly with or interested in the suit of D. Valentine & Co., vs. E. Dreyfus & Co., and that the act of seizing his goods and closing up his store by the Marshal is without any show of legal authority of any kind and is *illegal, tortious vexations* and *ruinous* to petitioner, in the breaking up of his business, and that the acts of said Marshal and his deputy have caused petitioner special damage for the causes and in the amounts set forth in the following items and has laid said Packard liable to said petitioner for vindictive and general damages as hereinafter set forth.

Item First—The seizure of petitioner's merchandise and closing up his store-house, have resulted in the entire breaking up of his business, whereby he has been deprived of the profits derivable from the sale of merchandise during the suspension of his business, which is at present continuing, and how long it may continue, petitioner cannot say. That his business is so broken up that even after he would get possession of his goods and store, it would take him six months to get his business restored to the condition it was in at the time of the seizure. That petitioner was doing a good and increasing business when his business was broken up; by which acts of said Packard and his deputy, petitioner has suffered damage in the sum of $10,000.

Item Second—That the seizure of petitioner's goods and the closing of his store-house has made it impossible to realize funds to pay the debts contracted by him in the purchase of stock and has entirely destroyed his credit in the wholesale market where he purchased goods and elsewhere, and has rendered him liable to be forced into bankruptcy by which he has suffered damage in the sum of $10,000.

Item Third—That the goods seized are of a character that if kept in an open house or shelves, as in this case, without daily attention are liable to damage and will so damage as to become unsalable except as damaged goods; that they have already damaged fifty per cent of their value at the time of the seizure, and if so kept for any considerable length of time will become worthless; if said goods are lost to petitioner, he claims their value at the time of the seizure $15,000.

Item Fourth—That petitioner is informed and beleives that through the neglect and unfaithfulness of the Marshal's agents, that $1000 worth of said goods have been stolen or destroyed.

Item Fifth—That petitioner has been compelled to employ counsel to appear in the suit of D. Valentine & Co., vs. W. E. Dreyfus & Co., to have said seizure set aside and be permitted to bond his goods in order to have the same restored to him, which cost him $1000 which he claims as damaged.

Item Sixth—Petitioner has been compelled to employ attorneys to prosecute this claim for damages

at a case of $2,500, which he claims as damages herein.

Item Seventh—Petitioner has been compelled to pay heavy expenses in travelling, paying hotel bills and other unnecessary expenses, and has lost and will loose much valuable time in attending to obtaining the release of his goods and attending to this suit which will amount to $1000, which is claimed as damage.

Item Eight.—Petitioner is compelled to pay $75 per month rent for said store-house and $50 per month to his clerk during the detention of his goods and store-house which he claims as damage in this case.

Petitioner avers that he is entitled to vindictive damage in this case for the reason that said goods and store-house has been seized without shadow of right, petitioner being in no manner connected directly or indirectly with E. Dreyfus & Co., the Marshall having no evidence or right to beleive that any of the goods in petitioner's possession belonged to E. Dreyfus & Co., or any member of that firm, but disregarding petitioner's rights and at the request of plaintiff in the suit of D. Valentine & Co., vs .W. E. Dreyfus & Co., did seize plaintiff's goods and store-house and ruined petitioner's business and credit which was done maliciously, illegally and wrongfully, and for which plaintiff claims $10,000 as general damage.

On the 7th April, 1875, a motion and petition

was filed in the State Court to remove this case to the Circuit Court of the United States. The grounds assigned in the petition for removal are (page 3 Printed Record):

1st. That at the time of the institution of this suit Packard, defendant, was U. S. Marshal for the District of Louisiana, and was bound to obey the orders of the District Court of the United States. "That the duty and authority to obey and execute such orders and writs directed to him is imposed and conferred on and vested in him by the law of the United States and not by the laws of any State thereof; that the direction and manner in which he shall discharge the duties of his said office and execute such writs is also established and ordained solely by the acts of Congress, * * * * and that in any and all suits, prosecutions or claims made or instituted against said Marshal on account of any neglect, error or supposed wrong committed by such Marshal, involves and is a suit arising under the constitution and laws of the United States, within the intent and meaning of an act of Congress entitled, "*An act to determine the jurisdiction of Circuit Courts of the United States, and to regulate the removal of causes from State Courts, and for other purposes. Approved March 3, 1875.*"

That petitioner's suit is instituted to recover damages "for wrongs and injuries alleged to have been committed by the said Packard, United States Marshal, in the execution of an order or writ issued by

the District Court of the United States in and for the District of Louisiana, directed to him; that the manner in which he shall execute said process and his duties and responsibilities in the execution of said process are regulated and defined alone by the law of the United States, * * * and the proper courts of the United States have full and complete jurisdiction to hear and determine all matters involved in the cause."

The rule and petition for removal was heard by the States Court on the 14th of April, 1875, and the Court refused to remove the cause. Page 5.

A copy of said suit and proceedings were, however, obtained and filed in the Circuit Court of the United States, under a writ of *certiorari* from the Circuit Court of the United States (pages 1 to 11,) and the Circuit Court of the United States having sustained the petition (page 11) for removal, the case was put at issue and tried in the Circuit Court of the United States, and there being judgment in favor of defendants, the case has been brought to this Court by writ of error.

This suit is between citizens of the State of Louisiana. The law under which defendant claims the removal provides: "That any suit of a civil nature * * * * brought in any State Court, * * * arising under the Constitution or laws of the United States * * * * either party may remove said suit into the Circuit Court of the United States for the proper district." Statutes at Large of 1875, page 470.

The inquiry then is, does the cause of action in this case arise under the *Constitution or laws* of the United States? This is a suit for damages for trespass against Packard, Marshal of the United States, for forcibly and wrongfully taking possession of defendant's property and other wrongs to defendant, under color of a writ issued by the District Court of the United States for the District of Louisiana, directing the seizure of the property of E. Dreyfus & Co. It is not predicated on any rights claimed under the constitution or laws of the United States. This claim for damages is a right under the State law. Under what provision of the Constitution or law of the United States is this claim made? Not on either! It cannot, then, be said that it arises under either. Packard having done the acts which resulted in the damage whilst he was Marshal of the United States, and under color of a legal writ in his hands, does not exempt him from damages for trespass under the State law. This suit could not have been brought in the United States Courts.

This suit is no part of the suit of D. Valentine & Co. vs. E. Dreyfus & Co., in which the writ issued under which the Marshal is alleged to have committed the trespass. It is between Nathan Feibelman who claims damage for the trespass of the Marshal in seizing and taking away his property, as both Feibelman and Packard are citizens of Louisiana.

This is not a suit to recover the property seized

from the Marshal, but plaintiff, Nathan Feibelman, in this case, abandons the property and sues the Marshal for damages to the value of the property seized, and for other damages. Does this suit, then, arise under any provision of the constitution of the United States or any law of Congress? Certainly not. Then where does the right to a removal exist?

The right of removal of a case from the State to the United States Court is statutory, and a strict compliance with the statute is necessary. The defendant, in his petition for removal, states no *fact* not stated and admitted by plaintiff in his petition —merely states what he understands to be *legal conclusions*, which adds nothing to his grounds for removal, 96 U. S. Rep. 199.

Previous to the act of Congress of March 3, 1875, there was no law authorizing the removal of a cause from the States to the United States Court on the ground that the suit arose under the constitution or laws of the United States. This was not one of the grounds on which a removal could be claimed previous to this act. Such cases, however, might be carried to the Supreme Court of the United States after a final decree in the highest court in the State when is drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and the decision is against their validity, or when any title, right, privilege or immunity is claimed under the constitution or any treaty or statute of, or commission held or authority exercised under

the United States, and the decision is against the title, right, privilege or immunity specially set up or claimed by either party under said constitution, treaty, statute, commission or authority, may be re-examined and reversed or affirmed in the Supreme Court upon a writ of error, und r the 25th section of the Judiciary Act, as amended by §2 of the act of February, 1867, being R. S. U. S. §709, the §2 of act of March 3, 1875, extends the right of removal, before trial in the State Court, to the Circuit Court of the United States, in cases *arising under the constitution or laws of the United States*, or treaty made under their authority ; this covers a portion of the cases provided for in R. S. U.S. 709, but not all of them ; it does not cover cases of *authority exercised* under the United States, nor where any title, right, privilege or immunity is claimed under a *commission held or authority exercised* under the United States.

Previous to the enactments of the laws which compose R. S. §643, suits against revenue officers and election officers could not be removed from the State Courts to the United States Circuit Court before the trial.

There does not seem to be any intimation in the laws of the United States that a suit against the United States Marshal in a State Court, for any cause whatever, can be removed from the State Court to the United States Court until after it is finally decided in the highest court in the State, and

then by writ of error to the Supreme Court under §25 of the Judiciary Act; §709 United States R. S.

The Court says, in Gold Washing Co. vs. Keys, 96 U. S. R. on page 203, that "a cause cannot be removed from a State Court simply because in the progress of the litigation it *may become necessary to give a construction to the constitution or laws of the United States; the decision of the cause must depend on that constitution.*" This covers the case before the Court fully. Also 94 U S. R. 4.

Writs of error lie from the decisions of the highest Court of the State to the Supreme Court of the United States under R. S. §709, in the following cases:

1st. When is drawn in question the validity of a *treaty* of the United States and the decision is against it.

2d. When is drawn in question the validity of a *statute* of the State and the decision is adverse to the claim under the same.

3d. When is drawn in question the validity of an *authority exercised* under the United States and the decision is adverse to the authority.

4th. When any title, right, privilege or immunity is claimed under the Constitution of the United States and the decision is against it.

5th. When any title, right, privilege or immunity is claimed under any statute of the United States and the decision is against it.

6th. When any title, right, privilege or immunity

is claimed under any treaty and the decision is against it.

7th. When any title, right, privilege or immunity is claimed under any *commission* held or *authority* exercised under the United States and the decision is against it.

But only *such of those cases* as arise under the constitution, treaties or laws of the United States, *are removable before trial* to the Circuit Court of the United States from State Courts.

Those cases in which is drawn in question the validity of an authority exercised under the United States, or where any title, right, privilege or immunity is claimed under any commission held or authority exercised under the United States are not removable to the Circuit Court of the United States under the act of March 3, 1875, or any other statute, whether such suit arises out of such acts or not.

The expression in §2 of act of March 3, 1875, "that any suit of a civil nature * * * rising under the constitution and laws," etc., means that the claim must be predicated on the constitution or laws, etc.; that is, that the claim must be set up in plaintiff's petition as conferring a right derived from the constitution or laws etc.; that if such a claim is made in defence of a suit where no claim is set up by the plaintiff under the constitution or laws, it does not come within the provision of said act, and does not entitle defendant who sets up such a defence, to a removal of the case, or it must be shown

in the petition for removal that the suit arises under the constitution or laws of the United States. This point is clearly stated in Gold Washing Co. vs. Keys, 96 U. S. R. 197.

Applying these principles to the case before the Court, we find that plaintiff sets up no claim under the constitution or laws of the United States; his claim is in trespass for damages under the State law, and defendant in his petition for removal shows no ground for the removal; he does not even set up a justification of his acts under the writ in his petition for removal; he sets up no fact giving the Court, under any circumstances, ground for removal; he does not aver in his petition for removal that the property he seized belonged to the defendants in the writ under which he seized it, or that he was *specially directed* by the Court to seize the identical property he did seize, or in fact, any ground justifying the seizure that would protect him under the writ; his whole petition for removal is the mere assertion of legal inferences, and not facts which this Court held, in the cases 96 U. S. R. 199, and 10 Otto, on page 323, was necessary to entitle a party to removal of the suit, the answer and other proceedings filed in the Circuit Court of the United States after the cause was taken to that Court, and all the proceedings had in that Court are *coram non judice*, as that Court was without jurisdiction in the case and cannot be invoked to show that it was a proper case for removal. Proper cause for removal

must appear in the original petition, or in the petition for removal. 96 U. S. R. 199.

The case of Buck vs. Colbath, 3 Wall. 340, on which defendant relied in the lower court as authority for the removal, we submit, is not applicable to the point under consideration. That was a case where a writ of error was taken from a judgment of the highest Court of Minnesota to this Court, and the question was whether this court had jurisdiction of the case under the 25th section of the Judiciary Act. No question of removal arose in the case. In that case, the Marshal of the United States was sued as a trespasser for taking defendant's goods under a writ of attachment against *other parties*. The Marshal justified under the writ. In the case now before the Court, the Marshal did not, in his petition for removal, state his grounds for defence; he merely alleges that he is regulated in the discharge of his duties as Marshal by the laws of the United States, and that any suit instituted against him as Marshal for trespass in executing a writ is a suit arising under the laws of the United States.

The first clause in the decision in the case of Buck vs. Colbath, 3 Wall. 340, shows that it comes clearly within the 25th section of the Judiciary Act, as the defendant claimed the protection of "an authority exercised under the United States." This was matter of defence. Consequently, this suit did not arise out of the constitution or laws of the United States, which is necessary to constitute the

right of removal ; and no such question was raised in that case.

We have, in the foregoing pages of this brief, discussed this point.

This suit, as the one of Buck vs. Colbath, was instituted in the State Court, for the reason that both parties were citizens of the same State, and no law authorized the institution of the suit in a United States Court. The party in this suit, Nathan Feibelman, plaintiff, and Packard and others, defendants, were not parties to the suit of D. Valentine & Co., et al. vs. E. Dreyfus & Co. No issue decided in this last named suit was *res judicata* against the parties to the former of the above named suits. If Packard and the other defendants, in their answer in the Circuit Court, justify his seizure under the writ issued from the District Court of the United States, and the decision is against the protection claimed, then a writ of error may be brought to this Court, as in the case of Buck vs. Colbath ; but in all this no right to a removal from the State Court to the Circuit Court of the United States is given by law, as the case does not arise under the constitution or laws of the United States.

If the objection that this is not a case legally removable from the State Court to the Circuit Court of the United States, should not be sustained by this Court, then we proceed to examine the legal points raised on the trial of this case.

Preliminary to the trial of this case, plaintiff, by

his counsel, moved to strike out portions of the original and amended answer. See motion, p. 18. The Court sustained this motion so far as to the portion of the original answer sought to be striken out, (see that portion of original answer, pp. 14, 15.) See order of Court or page 19, and no objection was taken by defendants to such ruling of the Court, but the Court refused to strike out the portion of the amended answer sought to be striken out by plaintiff.

The grounds on which plaintiff moved to strike out that portion of the amended answer are :

1st. That such issue cannot legally be raised in this case. The only question being as to whether plaintiff was in possession of the goods seized as owner and exercizing dominion over the same.

2d. That the defendant in this case does not represent the assignee or creditors and cannot seize or litigate the question of plaintiff's ownership of the goods.

3d. That whether plaintiff was in possession in good or bad faith, his possession cannot be disturbed by a seizure under a writ of seizure of the property of E. Dreyfus & Co.

The whole defence is predicated on this portion of the amended answer sought to be striken out by plaintiff. We will consider all the grounds on which the motion to strike out are predicated together.

We will first call the attention to the writ of seizure under which defendant Packard acted. See the writ on pp. 13 and 14.

Plaintiff was not a party to the suit of D. Valentine & Co., vs. W. E. Dreyfus & Co., and the writ directs the seizure only of the goods of E. Dreyfus & Co., that part of the writ which directs the seizure of the goods, wares and merchandise pretended to have been transferred by defendants, E. Dreyfus & Co., to Moses Feibelman, of Delta, does not make any mention of Nathan Feibelman, plaintiff in this case, nor does it direct the seizure of any thing in his possession. As an after thought the amended answer, pp. 16 to 18, was filed, setting up a conspiracy between E. Dreyfus & Co., Moses Feibelman, and Nathan Feibelman to defraud the creditors of Dreyfus & Co., by secreting the goods of Dreyfus & Co., the original answer makes no allusion to such conspiracy, pp. 13 to 15. This amendment was made evidently to try to lay the foundation to let in evidence that the goods seized in the possession of N. Feibelman, plaintiff, were goods obtained by Moses Feibelman from E. Dreyfus & Co., such as are referred to in said order as having been pretended to have been sold by E. Dreyfus & Co., to Moses Feibelman and liable to be seized under said writ.

This case occurring in the State of Louisiana is to be decided according to the laws and jurisprudence of that State. U. S. R. S. §914.

The allegations in defendants' original answer, pp. 14 and 15, clearly admits that the goods seized were in the possession of plaintiff when seized, as alleged in his petition in this case.

This case being governed by the laws and jurisprudence of Louisiana, the question is: can a person in possession of property, as owner, be disturbed in that possession by a seizure thereof, by the Marshal seizing the same under a writ against another person and to which he is no party?

The laws of Louisiana (R. C. C. 3453) provide that "Rights which are common to all possessors in *good* or *bad* faith are—

"1. That they are considered *provisionnally as owners* of the thing which they possess so long as it is not reclaimed by the true owner, or person entitled to reclaim it, and even after such reclamation, until the *right* of the person making it is *established*."

Articles R. C. C. 3414, 3415 define possessors in good and bad faith. R. C. C. art. 3415 defines the possessor in bad faith to be one "who possesses as master, but who assumes this quality when he well knows he has no title to the thing, or that his title is vicious and defective."

From these textual provisions of the laws of Louisiana, if "plaintiff was in actual possession of said property, and was then exercising dominion and control over it as owner" at the time the Marshal seized and took it out of his possession, he was "considered provisionally as owner" of it, whether he possessed in good or bad faith. This ownership continues until the *person* entitled to its *reclamation establishes* his rights to it by legal process.

Under these provisions of law, on the hypothesis

that this property formerly belonged to E. Dreyfus & Co., and the sale of it to plaintiff was fraudulent as to the creditors of E. Dreyfus & Co., can such fraudulent sale, under the laws and jurisprudence of Louisiana, be attacked by the seizure of the Marshal under the writ and in the manner it was done in this case?

The laws and jurisprudence on the subject of avoiding sales made in fraud of creditors in Louisiana is derived from the civil law, and is specifically defined in the Revised Civil Code of Louisiana, §§1970 to 1994. The decisions of the Supreme Court of Louisiana have been uniform from the organization of that tribunal to its latest decision on that point, that a sale in fraud of creditors cannot be attacked by a seizure by the sheriff, under an execution against the debtor, of the property in the hands of a third possessor, as was attempted in this case.

We refer the Court to the following decisions on that point:

St. Avid vs. Wumprender, 9 M. 648.
Richards vs. Nolan, 3 N. S. 336, on p. 338.
Peet vs. Morgan, 6 N. S. 137.
Barbarin vs. Saucier, 5 N. S. 361.
Crocker vs. DePassan, 5 La. 38.
Burnet vs. Duverges, 5 La. 126.
Weeks vs. Flower, 9 La. 384.
Keller vs. Blanchard, 19 A. 53.
Van Austern vs. Simons, 15 A. 302.

[redacted]

Schneider vs. Dreyfus, 21 A. 271.
Austin vs. DeRocha, 23 A. 44.
Anderson vs. Carroll, 23 A. 175.
Doherty vs. Leake, 24 A. 224.
Chapin vs. Blanc, 25 A. 35.

[redacted]

McAdam vs. Soria, 31 A. 862. This is very direct in point.

The same rule applies to personal as to real property, as is direclly held in the case of Schneider vs. Dreyfus, 21 A. 271. In several of the cases cited above, personal property was the subject of litigation. 23 A. 44. See case of McAdam vs. Soria, 31 A. 862, directly on the point, and the last decision on this point.

The Marshal could not, in avoidance of damages for his trespass, set up any defence that the creditors could not have set up, had they been made parties to this suit.

Suit may be instituted against the sheriff for trespass for wrongful seizure without making plaintiff in the writ a party. Peet vs. Morgan, 6 N. S. 137; Barbarin vs. Saucier, 5 N. S. 361; Crocker vs. DePassan, 5 La. 38.

A party damaged by the illegal acts of the sheriff or Marshal, for seizing his property under a writ against another person, may sue for damages without waiting to test the title to the property seized.

Sheriff vs. Morgan, M. La., on p. 624.
Crocker vs. DePassan, 5 La. 38.
Edwards vs. Turner, 6 Ro. on pp. 384–5.
In Re Marks, 2 B. R. 175.

We have not overlooked the decision in the case of Hozey vs. Buchanan, 16 Peters, 217, where the point raised by us in this case was decided adversely to the position we take; but it is evident from the decision, that had the law of Louisiana been shown in that case as we have attempted to show it in this case, that the ruling of the lower court in that case, which was in favor of the position we take in this case, would have been sustained.

Judge McLean, in delivering the opinion of the Court in that case, says, page 218: "The allegation of fraud in the answer (and there is no such an allegation in the case before the Court) in the sale from Wilkinson to the plaintiff below was a most material allegation. If established, it constituted a good defence to the action. On what ground this was stricken from the answer by the Court is not perceived and cannot well be imagined. *No authority has been shown in the Louisiana law for such a proceeding, and it is believed that none exists.*"

The Louisiana mode of proceeding was as well established in favor of such a proceeding then as now, and it is clear that the counsel who argued that case did not refer the Court to the Louisiana jurisprudence on this point, or else the decision of the lower court in that case would have been sus-

tained; under the authority of §914, U. S. R. S. the pratice in State Courts is to be the rule in the United States Courts, and such being the case, we contend that this rule should obtain in this case in the United States Courts.

Section 40 of the Bankrupt Act authorizes the judge to issue an order to the Marshal, directing him "*to take possession provisionally of all the property and effects of the debtor and safely keep them until the further order of the Court.*" This does not authorize the judge to direct the Marshal to take possession of property in the hands of any other person. The writ in this case directed the Marshal "to seize the goods, wares and merchandise pretended to have been *transferred and sold* by the defendant to Moses Feibelman, at Delta." This was not authorized by said section 40 of the Bankrupt Act, and is in direct conflict with Art. V of the amendments to the Constitution of the United States, which says that "no person shall be deprived of life, liberty or property without due process of law." As Feibelman was party to the proceeding in which said writ issued, it was not competent for the Court to order the seizure of property in the hands of persons not parties to the suit, as such order would be depriving such persons of their property without due process of law.

Judge Blatchford, *In Re* Harthill, 4 B. R. 131, held that an order similar to the one in this case was not authorized by section 40 of the Bankrupt Act, in so far as it directed the seizure of property which had been conveyed by the bankrupt to a third

person. In the case of Knight vs. Chancy, 5 B. R. 303, the effect of the constitutional provision above referred to is clearly defined, and is in accordance to the views we have expressed. See page 313.

The defendant rests his defence for taking the goods in plaintiff's possession, on the authority vested in him by said writ; he avers: "That in obedience to the command of said process, the said defendant by his deputies did obey and comply with the command of said writ according to the tenor thereof, and did take into his possession and custody the goods, property and chattels described and referred to in said writ, and *no other* goods, property or chattels whatever, in which said act, said defendant had, from the nature of said writ, no choice or election whatsoever. Page 14 of Record.

This comprises the *real defence* in this case. It is that defendant did comply with the command of the writ, and took into his custody the goods described in said writ, and no others, as from the *nature* of the writ he had no *choice or discretion.*

This can refer to no other goods than those taken from the possession of plaintiff, and has reference to *no other part* of the writ under which he acted than the *clause referred to* in this writ.

Let us now examine that clause, and see whether it gave any additional power to the writ, whether it added anything to the responsibility of the Marshal or imposed on him any duty not imposed by the writ if it had been left out.

It will be seen by the petition in the case of D. Valentine & Co. vs. E. Dreyfus & Co. that E. Dreyfus & Co. had their establishment at Monroe, La., and that Nathan Feibelman had his at Delta, La., in different parishes; consequently the goods referred to in this clause of the writ were not in the possession of E. Dreyfus & Co., but of Nathan Feibelman.

Now, Nathan Feibelman was not made party to the suit of Valentine & Co. vs. Dreyfus & Co., in which this order was made, and the Court has no legal right to order goods in his possession as owner to be taken out of his possession; in that proceeding, such an order was in violation of the 40th section of the Bankrupt Act, and of the 5th amendment to the Constitution of the United States, providing that no person shall be deprived of his property without due process of law.

In this case the writ ordered the taking provisional possession of the bankrupt's property. The goods pretended to be sold to Moses Feibelman were not particularly described by the *price, kind or value*, nothing to show the *particular thing* to be seized, nothing that *divested* the Marshal of the same *discretion* that he is required to exercise in the execution of all *mesne* processes, such as the one in this case, or final process on execution.

Rule XIII in bankruptcy lays down the guide for the Marshal in executing *mesne process* in such cases as the one under consideration—he is required to take possession of the property of the

bankrupt, *Provided* that if any of the effects so taken shall be claimed by any other person, the Marshal shall notify the creditor thereof, and may, within five days after such notice, deliver such property to the claimant unless the creditor shall give bond to the Marshal, to be approved by him, to indemnify him for taking the property, in which event he is required to retain the property in possession. No allegation of such in this case.

And *provided further*, that in case the *creditor claims* that any property not in possession of the bankrupt belongs to him, and should be taken by the Marshal, the Marshal shall not be bound to take possession of the same unless indemnified in same manner as above. No allegation that this was done in this case.

In both the cases above provided for, the Marshal is held liable as trespasser if the property detained does not belong to bankrupt; the bond he is authorized to take is merely to refund him any damages he may have to pay, but is in no other respect a protection to him. 2 B. R. 175; 3 id. 86; 4 id. 131.

From this the Marshal's duties in such cases are plain.

In the case of Buck vs. Colbath, 3 Wal. on pp. 342 and 343, this Court has defined the class of cases in which a Marshal is protected in the execution of orders of Court where a direct command to the officer is to take possession of particular property,

such as in writs of replevin orders of sequestration in chancery, and the processes in admiralty courts by which the *Res* is brought before it for its action. See also 13 La. Ann. 227 ; 14 La. Ann. 142.

The order in the case now under consideration does not fall within this class of cases, but comes clearly within the other class of cases, as defined in this decision, to-wit : writs of attachment or other mesne process by which property is seized before judgment to answer to the judgment, which is the case under consideration, and the final process of execution, elegit or other writ by which an ordinary judgment is carried into effect.

Tested by the above rule, the order under consideration was not one in the nature of which specific property was to be seized, nor does it describe the thing to be seized, as is required in such cases, so that to Marshal would be left without any *discretion* in the matter.

" That plaintiff's title and possession could not be legally disturbed by the Marshal under said writ, but only by due process of law instituted against him by some person claiming an adverse interest in it. "

This question was fully discussed by Judge Clifford in a carefully prepared opinion, 5, B. R. 305.

In this case *Chancy* was appointed assignee of *Hunt*, an involuntary bankrupt; assignment was made to him of all the bankrupt's property; subse-

quently the assignee claimed a stock of merchandise in the possession of a certain firm, and the parties in possession refused to deliver the same, claiming to hold the goods in full property as purchased from the bankrupt.

The assignee then presented a petition to the District Court sitting in Bankruptcy against the said parties in possession, praying that they appear and show cause why the pretended sale and transfer should not be adjudged void for the reasons assigned. Page 306.

The possessors of the goods filed a motion to dismiss the assignee's petition upon the ground that the District Court in that form of proceeding had no jurisdiction to hear and determine the matter in controversy. The District Court overruled this motion and ordered the parties in possession of the goods to answer the petition of the assignee.

Whereupon, the parties in possession of the goods filed a petition in the Circuit Court to review the order of the District Court. Pages 307 and 308.

The Circuit Court held that such causes of action cannot be determined by the District Court in a *summary way without due process of law.* Such controversies must be determined by *suit* in *equity* or by *action at law.* Cases of the kind before the Court, fall directly within the third clause of the section under consideration, " and were the property in controversy at the time the debtor was adjudged a bankrupt was in the *actual possession of a third per-*

son claiming absolute title and dominion of the same, the question of ownership, if the same is claimed by the assignee of the bankrupt, must be determined by a suit in equity or by an action at law." Page 311.

The learned Judge, in commenting on the authority contained in the 25th section of the bankrupt act, to cause to be sold the property of the debtor which has come into the possession of the assignee or *which is claimed by him* where it appears to the satisfaction of the Court that the title to the same is in dispute, the Judge holds that this only applies to property in the possession of the debtor at the time he is adjudged a bankrupt and was duly transferred to the assignee and that it remained in his possession at the time the sale was ordered. "The estate in this case was never transferred to the assignee and was not in his possession at the time the order of sale was passed. On the contrary, it was in the actual possession of the respondent firm claiming absolute title to and dominion over the same as their own property." Page 312.

The Judge says : Adopt the theory contended for by the assignee, and the constitution, which was ordained, to establish justice, becomes a mockery, as any man may be deprived of his property without due process of law—page 313 ; and on page 315 the learned Judge shows the true meaning of the law, and that it harmonizes with the rights of prossessors as owners and the constitution.

The Judge concludes his decision by saying :

" Viewed in any light, the Court is of the opinion that the District Court does not possess the power under that provision to order in a summary way the sale of an estate, *real* or *personnal*, although the same is claimed by the assignee even though the title is in dispute, if it also appears that the *estate in question is in the actual possession of a third person holding the same as owner and claiming absolute title to and dominion over the same as his property, whether derived from the debtor before he was adjudged bankrupt or from some other former owner.*" Page 317.

We have thus called attention to this decision, as it seems to us to settle the very question on which contends for.

This decision clearly shows that *property* in the *possession* of any other person than the bankrupt, held by the possessor as *owner* and exercising *dominion* over it, cannot be taken possession of by the assignee, much less the petitioning creditor, through the Marshal, as was attempted in the case before the Court, except by regular suit at law or in equity, as the case may be.

The same principle is announced by Judge Blatchford in the case—

In Re Hartbiel, 4 B. R. 131.

In Re Muller & Brentano, 3 B. R. 86.

In Re Isaac Marks, 2 B. R. 175.

We, therefore, contend that the issues attempted to be raised by defendants in their amended answer could not legally be raised in this case, and that this

amended answer should have been striken out, and that the Judge erred in not striking it out.

The bills of exception reserved by plaintiff in this case, go to the legality of the evidence offered in the course of the trial and are not material to be noticed on this appeal.

Plaintiff therefore contends:

First. That this case could not be legally removed from the State Court to the United States Court.

Second. That the issues attempted to be raised by defendants in their amended answer were such as could not be raised in this case.

JOHN RAY,
Attorney for Plaintiff.

Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 103.

MOSES FEIBELMAN, ADMINISTRATOR OF NATHAN FEIBELMAN, PLAINTIFF IN ERROR,

versus

S. B. PACKARD, UNITED STATES MARSHAL, MICHAEL GERNON AND W. R. FISH, SURETIES ON MARSHAL'S BOND, DEFENDANTS IN ERROR.

In Error to the Circuit Court of the United States for the District of Louisiana.

BRIEF OF DEFENDANT IN ERROR.

STATEMENT OF FACTS.

In 1872 a concern, known as the commercial partnership and firm of E. Dreyfus & Co., through representation of ability to pay, obtained a large stock of goods in New York and other Northern markets upon credit, exceeding in value one hundred thousand dollars; and with the goods they established a store for retail of general merchandise at Monroe, La. Failing to

meet or provide for their paper as it fell due, their creditors on examination found that the goods purchased on credit had disappeared, and the bankrupt firm apparently without means or inclination to pay its debts.

On the 21st of January, 1873, one of the defrauded creditors, the firm of David Valentine & Co, of New York, filed its petition in the District Court of the United States for the district of Louisiana, with the proper averments, praying that E. Dreyfus & Co. be adjudged bankrupts, and that an order or writ of provisional seizure issue. The writ was granted in due form in the following words:

"United States of America, District of Louisiana,
"District Court of the United States.

"D. Valentine & Co.
versus
E. Dreyfus & Co. } No. 1265.

"*The President of the United States to the Marshal of the United*
"*States for the District of Louisiana, greeting:*

"You are hereby commanded in the name of the United "States and of our District Court to take provisional posses- "sion of all the property, real or personal, belonging to the "firm of E. Dreyfus & Co., and to Emanuel Dreyfus, Marcus "Weil, Mrs. Fannie Weil, widow of C. Weil, and Caroline "Weil, widow of Samuel Weil, the individual members of said "firm, and all books of account, bond books and papers rela- "ting to the business of said firm, in whose hand soever you "may find the same within your district, and particularly the "goods, wares and merchandise pretended to have been trans- "ferred by the defendants to Moses Feibelman, of Delta, and "hold the same subject to the further orders of our court."
January 21, 1873.

The marshal, after taking possession of all property of the bankrupts to be found at Monroe, proceeded to Delta to execute the writ upon goods of the bankrupts in possession of Moses Feibelman. At Delta he found Feibelman in posses-

sion of a store or warehouse, the shelves laden with the goods of the bankrupts, some in the original packages, with the address of E. Dreyfus & Co. either intact or partially erased. The deputy demanded the delivery of the goods, and also demanded of Feibelman that he designate and point out any goods in the building not belonging to E. Dreyfus & Co., if he had any. Moses Feibelman refused either to deliver the Dreyfus & Co. goods, or point out any of his own mixed with the Dreyfus & Co. goods.

The marshal then seized all of the goods and held them under the writ, and held the property subject to the order of the district court. This occurred on the 3d of March, 1873.

Before the actual seizure *Moses Feibelman* was the only party setting up any claim to the goods.

Three days after, or on the 7th day of March, 1873, *Moses Feibelman* invoked the aid of the recorder of the parish of Madison, in his character as *ex officio* notary public, and made what he terms "a public instrument of protest," set out in full in printed record, pages 21 *et seq.* In that protest he again claimed all of the property seized as his sole property.

The first intimation that Nathan Feibelman claimed any part of the goods seized came in a motion in the bankrupt court to set aside the seizure as to the goods found north of a longitudinal meridian line running through the middle of the store. This motion was made on the 25th day of March, 1873, and never determined (record, page 34).

On the 24th day of April, 1873, Nathan Feibelman filed the petition in this cause in the Fourth District Court for the parish of Orleans, claiming damages for the seizure of the goods on "one side of a large storehouse," etc., not designating which side of the storehouse he claimed (record, page 5). On the same day, in the same court, Moses Feibelman and George Voelker, claiming to be copartners, sued the marshal and the sureties on his bond for damages resulting as he alleged, from the seizure of his share of the storehouse and stock. A copy

of that petition is in the record, page 31. Moses Feibelman and Voelker were defeated in that action, and the writ of error dismissed at the last term of that court.

Thus, when the property was first seized, Moses Feibelman claimed the entire storehouse and all of the goods seized, but after he had inspected the writ held by the marshal, in order, according to his belief, to render it difficult or impossible for the marshal to justify under his writ, the goods and storehouse were parcelled out, and new ownership invented, making it appear that there was no Moses Feibleman engaged in business at Delta, in his own name; but Moses Feibleman and Geo. Voelker, as copartners, asserted dominion and title to everything on one side of an imaginary line drawn down the middle of the storehouse, and Nathan Feibleman was asserted to have title and dominion on the other side of the line.

The suits remained in the State court without being put at issue until April, 1875, when, under the provisions of the act of 1875, both causes were transferred to the Circuit Court for the District of Louisiana. The case of Moses Feibleman & Co. was tried, with a verdict for defendants, and a writ of error dismissed at the last term of this court.

Nathan Feibleman died, pending the suit, on the 17th of December, 1877, the suit was revived in the federal court on the application of Moses Feibleman, as administrator of the succession. Record, page 15.

The petition alleges that prior to the 3d day of March, 1873, Nathan Feibleman rented from Moses Feibleman "one-half, or rather one side" of a large storehouse, about one hundred and thirty feet long and thirty feet wide, in Delta, and that he had his "side" of the dividing a large stock of merchandise, and was trading in dry goods; that on the 3d of March, 1873, S. B. Packard, marshal, through a deputy marshal, under a writ issued by the judge of the District Court of the United States for the District of Louisiana, in the suit of D. Valentine & Co. et al. vs. E. Dreyfus & Co., No. 1265 of the docket (a copy of the

writ is made a part of the petition), seized all of his goods as the goods of E. Dreyfus & Co ; that the goods seized were the property of the petitioner and not the goods of, or acquired from E. Dreyfus & Co.; that the goods seized were worth about $15,000, and that the defendants are liable to him for "vindictive and general damages :"

1. For breaking up his business, $10,000.

2. For danger of being forced into bankruptcy, $10,000.

3. For damage and deterioration of goods while under seizure, and further deterioration, possible if detention is continued, $15,000.

4. For goods stolen by marshal's keepers, $1,000.

5. Expenses for counsel on an ineffectual effort to set aside the seizure by motion made in the bankrupt court, $1,000.

6. Fees of attorneys for instituting and prosecuting this suit, $25.00.

7. Hotel bills, loss of time and traveling expenses in attending to the suit, $1,000.

8. Seventy-five dollars a month for rent and fifty dollars per month for desk hire during the time the goods were under seizure.

9. For vindictive damages, $10,000.

That the defendants, Gernon and Fish, are sureties on the official bond of the marshal, and liable, *in solido*, with Packard, for all of the several items of general and special damages, laid at over $66,000. Record, page 5; amended petition, record, page 9.

To this petition, as amended, the defendants, on January 10, 1876, plead the general denial, admitting the issuance of the writ of provisional seizure from the bankrupt court setting out the writ; that the marshal obeyed the writ, and took no other goods or property than the goods described in the writ, and delivered the goods over to the bankrupt court, as commanded in the writ; that the control of the goods so taken was in the bankrupt court; that the bankrupt court had sole power to try

all questions of title; that on the 25th day of March, 1873, the plaintiff appeared in the bankrupt court, and submitted to that court the question of his alleged title to the goods seized; that the issue so made had been tried in the bankrupt court and submitted to the court, and is yet undecided. Record, page 18.

So much of this answer as set up the trial of property in the bankrupt court, and its exclusive control of that issue, was afterwards, on motion of the plaintiff, stricken out by the court. Record, page 19.

On the 3d of January, 1880, by leave of the court, the defendants filed an amendment to their answer, in which they charged that Nathan Feibleman was not and at no time had been the lessee of any portion of the store at Delta, or the owner of any of the property seized; that his pretended ownership was a sham and a fraud on the part of Nathan Feibelman; that such pretended ownership was a part of a fraudulent conspiracy, entered into between Nathan Feibelman, Moses Feibelman and the bankrupts, E. Dreyfus & Co., to cheat and defraud the creditors of the bankrupts, in which it was agreed between the conspirators that a large portion of the assets of the bankrupts should go into the possession of the two Feibelmans for concealment, the title to remain in the bankrupts; that the two Feibelmans should conceal the property and keep it away from the creditors; that to carry out this scheme, Moses Feibelman, in a clandestine manner, got possession of the goods of the bankrupts, and conveyed them, with the assent of the bankrupts, to his store in Delta; that in order to increase the chances of the success of the scheme, and more effectually conceal the real ownership of the goods, Nathan Feibelman was taken into the conspiracy, and it was given out and pretended that Nathan was in possession of half of the store at Delta, in order that it might appear that Nathan was in possession and the pretended owner of a portion of the goods of the bankrupts; that Nathan had no title to any of the goods, but was a joint actor with Moses and E.

Dreyfus & Co. in one single purpose to swindle the creditors out of the goods; that Nathan never had any title, lease or property in any part of the store at Delta, and had suffered no loss or injury whatever; that the goods seized were the goods named in the writ.

Upon the issues so made the case was tried with a jury at the April term, 1880, and resulted in a verdict for defendants.

On the trial plaintiff reserved five bills of exceptions (record, pages 21, 34, 35, 36, 37), but the record comes up without any assignment of error, and at date of printing none has been made.

In the case of Moses Feibelman, dismissed at the last term, it was claimed that the federal court was without jurisdiction, the case not being transferable under the act of 1875, and doubtless the same ground will be taken in this cause.

This point cannot be seriously taken. The suit is on a U. S. Marshal's bond by a statutory assignee. Both the bond and the right of plaintiff to sue for the breach exist only by federal legislation. Strike out the federal legislation on the subject, and the bond would cease to exist. Strike out that portion of the federal statutes which permits private citizens to sue on a marshal's bond, and the bond would stand as an obligation to the United States as sole obligee.

[illegible] issued by the bankrupt

At the date of printing this brief there had been no assignment of error or brief filed, and it was supposed that the alleged error relied on to reverse would relate to the five bills of exceptions. As the plaintiff in error has abandoned his bills, the discussion in the brief is no longer pertinent.

We respectfully submit that on the question of jurisdiction in the Circuit Court, *Railroad* vs. *Mississippi* (12 *Otto*, 135) is conclusive, and that *Sharpe* vs. *Doyle* (12 *Otto*, 686) disposes of all questions raised by the second assignment of error.

The first document, the admission of which was excepted to, is the "public instrument of protest" by or for Moses Feibelman, record, page 21 *et.seq.*

The issue was the ownership of the goods seized. The defendant asserted that Nathan was a tool, a co-conspirator with Moses Feibelman, to set up a pretended title in Nathan. The protest tended to prove the issue by proof of the fact that the demand and protest came from Moses, accompanied with proof that no other protest, claims of ownership or demand was made, was material, and proper evidence, to go to the jury for what it was worth, as a fact.

The same is true of the copy of inventory of the succession of Nathan Feibelman. Moses Feibelman was administrator of that succession, revived this suit in his capacity as administrator, and under the law, representing both heirs and creditors, was bound to see that all of the effects of the succession were placed on the inventory and covered by his bond. The inventory upon which he qualified was $3918.98, with the item of over sixty thousand dollars, demanded in this suit, entirely omitted from the inventory, showing, when taken in connection with the acts of parties before the death of Nathan, that neither Nathan or Moses, as between themselves, considered Nathan as owner of any goods in the store or a sufferer from the seizure.

The petition in the case of Moses Feibelman et als. vs. S. B. Packard et al., was competent proof of the relation of the parties after the seizure, that separate suits were based upon the alleged division of the store and goods into separate ownership; and the fact that Moses went into court with his pretended partner in compliance with the terms of the alleged fraudulent scheme of fictitious ownership averred in the answer was in fact the best proof of that fact.

The assignment of the bankrupts' property to David Wallace, the assignee in bankruptcy, was both competent and necessary to show that all title in the estate of the bankrupts

had passed over to the assignee by formal conveyance, and that all goods of the bankrupts in the hands of Nathan Feibelman, belonging to the bankrupts, had been conveyed to the assignee.

Bill of exceptions No. 4 (record 36) is of the same class as No. 1, objection to evidence relating to conspiracy; but is more seriously defective in that the bill does not show what "*transaction between the firm of E. Dreyfus & Co. and Moses Feibelman in the year 1872*," or what *acts or declarations of alleged coconspirators* were admitted in proof or given to the jury; whether the proof was of such character as to injure the plaintiff in error or affect the result.

The bill, however, does show that, before the defendants closed their proofs, they produced testimony, which, in the opinion of the court, did establish the existence of the conspiracy as laid in the amended answer, but *what testimony* was admitted, and to *what testimony* the plaintiff objected, does not appear in the record. There is nothing in this bill which can be assigned as error.

As a legal document bill of exceptions No. 2 (record 34) is phenomenal.

J. C. Seale, an attorney, is produced as a witness to prove what would be a reasonable attorney's fee for preparing and filing the abortive motion for the restoration of the seized goods, made in the bankrupt court in the case of D. Valentine & Co. vs. E. Dreyfus & Co.—a motion never either granted or refused—"and for attending to the trial of motion in court," and "*what traveling expenses and expense attendant on traveling from Delta, La., to New Orleans, where the court sits in which such motion was made, including hotel bills and other necessary expenses in making such trips to attend to said motion and to obtain the release of his property from seizure.*"

Even had this motion been made in any case to which the defendants in error were parties the evidence was properly excluded.

Taxable costs alone would have been recoverable.

Philip et al. vs. Nock, 17 Wall. 460.

The Neustra Senora De Regla, 17 Wall. 29.

Oelrich vs. Spain, 15 Wall. 211.

Flanders vs. Tweed, 15 Wall. 450.

The Baltimore, 8 Wall. 392.

Day vs. Woodwith, 13 How. 363.

Teese vs. Huntington, 23 How. 2.

The motion in fact was made in the bankrupt court, in the matter of the bankruptcy of E. Dreyfus & Co., without result, or any final final disposition or judgment for costs.

Bill of exceptions No. 3 is equally frivolous. The witness, Richardson, being asked, under objection, whether the plaintiff sustained other damages than the loss of goods, the taking possession of the store and closing it up—if so, in what the damages consisted, and to give the items of damage—answered, "loss of credit," "loss of profits on goods that would have been sold during the term of the seizure," and "loss of his place of business."

The witness was then asked to state the amount of damage inflicted upon the plaintiff under each head or item, as defined in his answer to the preceding question. This question was objected to, and answer limited to damage from loss of credit. What the objection was does not appear. One ground of objection urged at the trial was that, from the occupation of the witness, he could not be an expert, and was incompetent to conjecture damages under either head; that the proper basis for the question had not been laid, at least as far as loss of profits on goods and loss of place of business. As this was a question of fact, to be determined by the court, the presumption is that the testimony was excluded for that reason.

Bill of exceptions No. 5 (record 37) is of the same class. The swearing attorney, J. C. Seale, who figures in bill of exception No. 2 (record, page 34), was offered to prove the expenses of the abortive motion in the bankrupt court, is now

offered to prove supposed damages which Feibelman claims to have sustained on account of being deprived of the profit he would have realized by the sale of the stock of merchandise which was seized. Here again the objection was urged that it was a violent presumption, that an attorney knew well his own profession and business, and that the witness was not competent to swear to a trader's profits as an expert, even if the evidence was competent and free from other objections. Such objection, being that if the goods, at the time of the seizure were the goods of the plaintiff, the measure of damages could in no event be more than the market value of the same class of goods at the time and at *that* place in open market; that the plaintiff had been allowed to prove that value at Delta, by his own witnesses, at the highest figures which their temerity would permit; that it was not competent to add to that price another profit.

Bills of exception Nos. 1 and 4 relate to the admission of evidence relating to conspiracy, the real title and ownership of the goods seized, and the question whether Nathan Feibelman was the lessee of any part of the store.

Nos. 2, 3 and 5 relate to the rejection of evidence concerning damages.

The first issue on trial was whether Nathan Feibelman was the owner of any of the property seized on the averment in the answer that the goods were the goods of E. Dreyfus & Co., and that the Feibelmans were in possession without title, scheming to hide the property from the bankrupt court by the conspiracy charged in the amended answer No. 1, is fatally defective in that it is an omnibus bill of exceptions, and does not show a separate exception to the admission of each several document.

The bill does not purport to give all of the evidence upon the issue of title or conspiracy; nor enough to show the importance of the documents admitted.

Bill of exceptions No. 4 (record, page 36) contains the state-

ment that the defendants, in the opinion of the court, proved the existence of the conspiracy alleged in the amended answer. The documents show the acts of the conspirators, at the time of the seizure and subsequent thereto, when subsequent acts explain or tend to prove the actual fraudulent relation of the conspirators while acting as coconspirators. The protest of Moses Feibleman was admissible to show that he claimed the entire property—a fact which, taken together with the fact that Nathan stood by and made no demand, asserted no title to the property, was significant, not only of his relation to the property at the time of the seizure, but of some import upon the question of damages, either special or vindictive.

The inventory of the succession of Nathan Feibleman, administered by Moses, and silent as to this demand of over $66,000, was consistent with the plea that no title in Nathan was contemplated; that the money, if obtained, would go, under the agreement, to enrich E. Dreyfus & Co., the bankrupts.

The petition in the suit of Moses was the best proof that the agreement to make a fictitious, apparent division of the property, and each sue for a portion to increase the chances of success of the scheme, was carried out.

Bill No 4 relates to Marcus Weil, one of the alleged coconspirators, offered as a witness to prove the conspiracy, of which he was a member. What questions were propounded and objected to does not appear; not one word of the testimony given by the witness is set out in the bill; nor does it appear at what stage of the trial the witness was offered, or that he gave any testimony tending to affect the jury or the issues.

To render an exception available in this court it must appear that the ruling excepted to affected or might have affected the the decision of the case. Railroad Company vs. Smith, 21 Wall. 158.

Whatever the evidence admitted may have been, the objection made was that no sufficient basis had been laid for the admissions of proof of the acts or declarations of coconspirators.

This was a question to be determined by the court in the exercise of its discretion.

Jones vs. Hurlbut, 39 Barb. 403.
Burk vs. Miller, 7 Cush. 547–550.
State vs. Ross, 29 Mo. 3251.
State vs. Nash, 7 Iowa 347-384.
Greenleaf on Ev., 5, ¶ III.

The presumption is that the court found that proper foundation had been laid for the sworn evidence of one of the coconspirators before a jury trying the issue. Certain it is that the court became satisfied before the case went to the jury, as the bill states that the conspiracy was established by proof satisfactorily to the judge.

If it is conceded in argument that at the time when Moses Weil went on the stand no sufficient foundation had been laid for admission of proof of acts and declarations of coconspirators, and that Weil's testimony was confined to that class of proof, as a proper foundation, *was laid* before the evidence of defendants closed, there is no error.

It is not error to admit evidence of acts and declarations first, upon promise of counsel to connect afterwards.

Bowers vs. Still, 49 Penn. St. 65.
Cobb vs. Lent, 4 Greenl. (Me.) 503.
Place vs. Munster, 65 N. Y. 89.

Greealeaf on Ev., vol. 1, page 8, ¶ III, says "*Sometimes, "for the sake of convenience, acts or declarations of one alleged "conspirator are admitted in evidence before sufficient proof is "given of the conspiracy, the prosecutor undertaking to furnish "such proof in a subsequent stage of the cause.*"

It is a simple question of the order of proof, entirely in the discretion of the court.

As to bills of exception Nos. 2, 3 and 5, all relate to the rejection of evidence of alleged damages.

As the jury found that Nathan Feibleman, plaintiff, had no property seized; that E. Dreyfus & Co. were the owners of the

goods at the time of their bankruptcy; that the pretended lease was a sham, it is difficult to comprehend how the plaintiff could be injured by any ruling complained of. The jury never considered the question of damage, as they found against the plaintiff on the question of property. If this was not the case there is no error.

No. 2, relating to the rejection of the testimony of J. C. Seale, the swearing attorney, on the subject of attorney's fees and traveling expenses, is not worthy of further attention.

The only complaint in Nos. 3 and 5 is that the court rejected evidence of witnesses Richardson and the attorney Seale, as to their opinion of the amount of damage *by loss of profits which would have been realized by the sale of the stock of merchandise seized.*

There is no evidence in the record to show any malice or ground for vindictive damages. The measure of damage, if the goods had been the property of Nathan Fiebleman, would have been the value at the time of seizure, in open market, at Delta, and no more, except, perhaps, interest. As to interest there is great conflict of authority.

Where trespass to personal property is not accompanied by any circumstance tending to aggravate the wrong, and sufficient to justify exemplary damages, the measure of damages is the same as *in trover.*

Dorsey vs. Manlove, 14 Cal. 553.
Railroad Co. vs. Johnston, 74 Ill. 83.
Greening vs. Johnston, 1 C. & P. 625.
Coolidge vs. Choate, 11 Met. 79.
Gardner vs. Field, 1Gray, 151.
Brown vs. Allen, 35 Iowa 306.

The retail price of merchandise would be unfair, as, in fixing that price, the merchant takes into consideration, first cost, store rent, clerk hire, insurance and probable bad debts.

State vs. Smith, 31 Mo. 566.
Butler vs. Collins, 12 Cal. 437.

Nightingale vs. Scannell, 18 Cal. 315.
Starkey vs. Kelley, 50 N. Y. 677.
Wehle vs. Haviland, 69 N. Y. 448.
Smith vs. Cowdry, 1 How. 28.
Yarborough vs. Nettles, 7 La. An. 116.
Badillo vs. Tio, 7 La. An. 487.

Future probable profits are not recoverable.

La Amistad de Rues, 5 Wheat. 385.
The Amiable Nancy, 3 Wheat. 546.
Conrad vs. Ins. Co., 6 Pet. 262.

If the plaintiff in error had the slightest interest in the rule of damages for the detention of property which the jury found he did not own, but was feloniously concealing from the parties entitled to possession, he cannot find error in any ruling of the circuit court.

We respectfully submit that there is no error in this record.

J. R. BECKWITH,
Of Counsel for Defendants in Error.